

VOLUME ONE

Appendix to the Journal of the Assembly

LEGISLATURE OF THE STATE OF CALIFORNIA
1961 REGULAR SESSION

REPORTS

January 2, 1961—June 16, 1961



HON RALPH M BROWN
Speaker

HON WILLIAM A MUNNELL
Majority Floor Leader

HON CARLOS BEE
Speaker pro Tempore

HON JOSEPH C SHELL
Minority Floor Leader

ARTHUR A OHNIMUS
Chief Clerk of the Assembly

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1959-1961

VOLUME 1

NUMBER 4

REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON CIVIL SERVICE
AND STATE PERSONNEL

House Resolution No. 326.2, 1959

**MEDICAL CARE INSURANCE FOR STATE EMPLOYEES
AND OTHER CIVIL SERVICE PROBLEMS**

MEMBERS OF THE COMMITTEE

CHARLES W. MEYERS, *Chairman*

EDWIN L. Z'BERG, *Vice Chairman*

MONTIVEL L. BURKE

SAMUEL R. GEDDES

REX M. CUNNINGHAM

RICHARD H. McCOLLISTER

HELEN N. WILKIE, *Committee Consultant*

December 1960



Published by the
ASSEMBLY

OF THE STATE OF CALIFORNIA

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HON. CARLOS BEE
Speaker pro Tempore

HON. WILLIAM A. MUNNELL
Majority Floor Leader

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Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk

LETTER OF TRANSMITTAL

December, 1960

HONORABLE RALPH BROWN
Speaker of the Assembly
State Capitol, Sacramento, California

MR SPEAKER AND MEMBERS OF THE ASSEMBLY: Pursuant to House Resolution No. 3262 of the 1959 General Session, directing the Assembly Interim Committee on Civil Service and State Personnel to ascertain, study and analyze facts relating to the State Civil Service System and state personnel, your committee transmits herewith the final report of its findings and recommendations.

Legislation recommended by the committee is set forth in this report, along with committee observations and committee recommendations. Legislative action has not been recommended for some of the subjects studied, because such action has been deemed unnecessary or inappropriate at this time, or because further research and study appear necessary.

The committee spent a considerable part of its time hearing the subjects of Medical Care Insurance and consolidation of Federal Social Security with the State Employees' Retirement System, along with other retirement bills and related matters.

Ten committee hearings were held as follows: September 28, 1959, Sacramento; November 16 and 17, 1959, San Francisco; December 14, 1959, Sacramento; January 18 and 19, 1960, Los Angeles (night hearing on Social Security January 18); February 24 and 25, 1960, San Francisco; April 26, 1960, Napa (night hearing on Social Security); June 20 and 21, 1960, San Diego (night hearing on Social Security June 20); July 25 and 26, 1960, San Francisco (night hearing July 25 on Social Security); August 18 and 19, 1960, Eureka (night hearing August 18 on Social Security) December 20, 1960, Sacramento. Two sub-committee hearings were held in Sacramento; one on January 25, 1960, and one on October 20, 1960.

Transcripts of the hearings and other information submitted are available in the office of the Chairman of the Committee, Charles W. Meyers, Room 3154, State Capitol, Sacramento, California

Respectfully submitted,

CHARLES W. MEYERS, *Chairman*
EDWIN L. Z'BERG, *Vice Chairman*
MONTIVEL A. BURKE
REX M. CUNNINGHAM
SAMUEL R. GEDDES
RICHARD H. MCCOLLISTER

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PART I

**MEDICAL CARE INSURANCE FOR
STATE EMPLOYEES**

MEDICAL CARE INSURANCE

RECOMMENDATIONS

1. The Assembly Committee on Civil Service and State Personnel forcefully recommends that the State should forthwith establish, administer and partly finance a long-delayed basic medical care insurance program for state employees, for the following reasons among others set forth in this report .

- A. To promote increased economy and efficiency in the State Service.
- B. To enable the State to attract and retain qualified employees by providing health benefit plans similar to those commonly provided in private industry and in other public jurisdictions
- C. To recognize and protect the State's investment in each permanent employee by promoting and preserving good health among state employees

2. The program should be administered by the Board of Administration of the State Employees' Retirement System. The board should approve health benefits plans and may contract with carriers offering basic health benefits plans. Such plans should include, by law, hospital benefits, surgical benefits, in-hospital medical benefits, out-patient benefits, obstetrical benefits, and may include other medical benefits as determined by the board. Life insurance should not be included in the coverage. The board should make available to those eligible to enroll in any approved health benefit plan sufficient information as will enable employees or annuitants to exercise an informed choice among types of plans available.

3. The State's contribution should be sufficient to cover the costs of a basic health benefits plan, or \$5 per month for each employee, whichever is the lesser amount. The State's contribution should commence following six months of employment for each employee. Administrative costs should be borne by the State over and above the cost of monthly contributions.

4. Former employees on the state retirement rolls should be eligible to enroll in an approved health benefits plan, either as individuals or for selves and family. Enrollment by any employee or annuitant shall authorize the deduction of contributions from the employee's or annuitant's salary or retirement allowance.

5. Employees of the University of California would become eligible to participate in the state program only upon approval of the Board of Regents of the university.

FINDINGS

The necessity and desirability of providing partially state-financed, basic medical care insurance for state employees has been widely recognized for years. Enabling measures have been considered in the Leg-

islature at least since 1953, and the Assembly Interim Committee on Civil Service and State Personnel recommended such legislation at the 1957 and 1959 sessions

While there has long been general agreement on the growing *need* for this sort of program, there have been unresolved questions over *details*. During 1959 and 1960, this committee held hearings in various parts of the State and sought diligently to resolve differences over specifics. All witnesses and committee members were unanimous in the feeling that a medical plan should be enacted for state employees. The specific recommendations in this report, including the proposed act shown in the appendix are the outcome of the committee's deliberations.

Possibly no other single factor tended to give greater emphasis to the growing need for a state employee medical insurance program since the last interim committee study on the subject than the granting by the 1959 Congress of such benefits to federal workers across the land. Previous studies showed that many foreign countries, including Canada, Italy and Switzerland, have for years provided their civil service employees with health insurance.

Of great significance is a special survey of health and welfare benefits in California local government agencies by the California State Personnel Board in September-November of 1959. The survey showed the growing trend toward government participation in employee medical plans in this State.

It was found that of 53 California counties responding to the survey, none was without some sort of health and welfare plan for its employees. Thirty-seven of the counties, or 70 percent, were paying part or all the cost.

Of 146 cities that returned questionnaires, 139 had benefit plans for employees, and 118, or 85 percent, were paying all or part of the cost.

Of the 155 cities and counties contributing to employee medical programs, 63 were paying 41 to 60 percent of the costs, and 51 paying 81 to 100 percent.

As a trend indicator, the Personnel Board looked at 44 counties and 85 cities that have responded to this type of survey since 1953. This showed that in 1953, 28 percent of the counties with health and welfare plans were contributing to the costs. This rose to 47 percent in 1955; 50 percent in 1956; 62 percent in 1957; 64 percent in 1958, and 73 percent in 1959.

Of the cities, 27 percent were paying part or all of the costs of such plans in 1953, rising to 92 percent in 1959.

The Personnel Board as far back as 1956 strongly recommended that health and welfare benefits be enacted for state employees. In 1957, the board observed.

"The state worker does not have the protection of the variety of benefits that are now normally provided in industry, such as accident and health insurance; medical, surgical and hospital insurance; life insurance; unemployment insurance; and Old Age and Survivors Insurance.

"The practice of the employer either fully or partially paying for employee health and welfare plans is almost universal in private industry in California."

The Personnel Board also observed that the Legislature actually established a precedent in the field when in 1957 it extended health and welfare benefits to 215 casually employed trades workers and 550 printing trades employees. For these employees, the State pays the entire premium for hospital, medical and surgical insurance for the employees and their dependents.

Whereas this committee is recommending a state contribution of \$5 per month per employee for the 80,000 or so state workers not now receiving such benefits, the current state contribution to the printing trades group is \$12 per month. Rates of contribution for construction workers are generally higher. In both instances, the State conforms to the practice in private industry and pays the amount agreed upon by labor-management negotiations in the industry in the particular areas involved.

A recent exhaustive, nationwide survey by the United States Chamber of Commerce revealed that 98 percent of the firms checked as representative of national practice made contributions to employee health and welfare programs. In the printing, petroleum, primary metals, electrical machinery and some other industries the chamber found 100 percent of the firms contributing to employee "life insurance premiums, death benefits, sickness, accident and medical care insurance premiums, hospitalization insurance, etc."

The same survey showed that the representative firms reported expending 23 percent of their payrolls for employee health and welfare benefits. This compares with California expenditures of less than one-tenth of one percent for the relatively few employees mentioned above.

In conclusion, it should be noted that this committee in March, 1960, announced general agreement by all interested parties in health insurance legislation for state employees and asked Governor Edmund G. "Pat" Brown to place the subject on the call of the special session. (See Appendix A for proposed bill.)

It was publicly announced at the time that the following organizations had endorsed the committee proposals: The Blue Cross Plan, Kaiser Foundation Health Plan, Inc.; California Association of Highway Patrolmen, California Vision Services, California State Employees Association; California Labor Federation AFL-CIO, California State Employees Unions Council AFL-CIO, Cal-Western State Life Insurance Co.; State Employees' Retirement System; Public Health League; State Personnel Board, University of California; California School Employees Association, and others.

PART II

**CONSOLIDATION OF STATE EMPLOYEES' RETIREMENT
SYSTEM WITH FEDERAL SOCIAL SECURITY**

CONSOLIDATION OF STATE EMPLOYEES' RETIREMENT SYSTEM WITH SOCIAL SECURITY

FINDINGS

This committee held many hours of hearings on this controversial subject among state employees, including unprecedented night sessions in Napa in April, San Diego in June, San Francisco in July, and Eureka in August. The committee will be receiving additional information and facts and plans to discuss this subject at its next executive committee meeting.

At the outset of each hearing, William E. Payne, executive officer of the State Employees' Retirement System, set the background for discussion by briefly outlining the history of federal social security legislation.

The original Social Security Act of 1935 was aimed at providing a reasonable subsistence to workers in industry and commerce and did not cover any governmental employees. In 1939, the survivors' benefit section was added, providing protection to the dependents of retired workers and to the survivors of workers themselves. In 1950, new groups were added to social security coverage, including state and local governmental employees, providing these employees were not already covered by a retirement system. In 1954 this was changed to provide for coverage of state and local governmental employees even though they were already covered under a retirement system, providing a majority of the members of the system voted in favor of such coverage.

As a result of these and other extensions, social security coverage has grown to the extent that today almost 100 percent of nongovernmental employees, and some 70 percent of government employees, are so covered. This includes the general state employees of most states with the exception of California, but excludes federal employees themselves.

After federal law was amended in 1954 to permit coverage of state and local governmental employees, the California Legislature, in 1955, adopted legislation authorizing a referendum, then required by law, to determine whether California state employees wished to be covered by social security. The means of coverage would have been under the so-called offset system, where additional benefits gained through social security would have been generally offset by reduced benefits under the state system.

Also at that time it was necessary that all of the group be brought under social security, or none. The proposal was defeated at employee referendum in 1955 by a vote of 34,102 against integration to 12,858 in favor.

Subsequently, the Congress permitted members of state and local governmental retirement systems to co-ordinate with social security

by the so-called division or optional choice approach, eliminating the federal requirement for referendum.

The Board of Administration of the California State Employees' Retirement System recommended legislation at the 1957 California Legislature permitting the division of SERS for purposes of social security coverage, with each member of the system allowed to make an individual choice of continuing with SERS solely or of seeing his benefits co-ordinated with social security. All new employees would be covered. No referendum would be required under this plan, which still is supported by the retirement board.

The 1957 Session did enact legislation permitting the division of SERS for the purposes of social security coverage. But because of controversy over the subject among state employees, the Legislature added the requirement that there be an election among members of the system before the division could proceed.

In addition, the 1957 Legislature allowed employees of some 21 counties under the 1937 County Retirement Act to proceed to social security coverage under the divided approach.

In its 1958 report to the Governor, the SERS Board of Administration recommended that the Legislature provide Social Security coverage of state employees, retroactive to January 1, 1956, and that the coverage be by division of the state system permitting each member to choose.

The board recommended that if this free choice were enacted there be a modification of the present so-called $\frac{1}{60}$ th formula of SERS, under which a state employee retiring at age 60 receives an allowance amounting to $\frac{1}{60}$ th of his highest three-year salary average, times the number of years he has in the system. Under the existing formula, an employee retiring at age 60 after 30 years in the system receives a retirement allowance of one-half of the average of his highest three years of salary.

Under the change proposed by the SERS, the $\frac{1}{60}$ th formula would be modified to a $\frac{1}{90}$ th formula on that portion of salary that is subject to Social Security tax. The basis for the so-called $\frac{1}{90}$ th- $\frac{1}{60}$ th formula is to control the costs for both the State and the employee who elects co-ordinated coverage, so that in neither case would the cost reach unrealistic levels. It also should be noted that the $\frac{1}{90}$ th- $\frac{1}{60}$ th formula was adopted by the Legislature for the independent county retirement systems under the enabling legislation enacted in 1957.

At the 1959 legislative session, the Retirement Board sponsored a measure, S.B. 704, to permit present state employees to elect co-ordination with Social Security on an individual basis, under the $\frac{1}{90}$ th- $\frac{1}{60}$ th formula, and without a referendum. All new employees would be covered by co-ordination.

At the same session, the California State Employees Association had legislation introduced, A.B. 2062, providing for survivorship benefits under SERS. The CSEA opposed the Retirement Board proposal. The result was that A.B. 2062 was amended to provide for an election among members of SERS on the question of dividing the system to provide Social Security coverage on an optional basis for present employees, with all future employees automatically coming under the co-ordinated coverage.

This measure, ultimately adopted by the Legislature, also provided that those members who did not take Social Security coverage, could select a survivors' benefit within the state system. This same choice was given classified school employees, who are members of the Retirement System, except in their case, because of strong representations made by their official spokesmen, the requirement of an election was deleted.

The SERS board supervised an election among state employees on the co-ordination proposal in the fall of 1959, and the proposal was defeated by a vote of 43,411 to 32,303.

The California State Employees for Social Security promptly charged that the California State Employees Association had misled its members on the proposal and that there had been irregularities in the election. A suit was filed in San Francisco Superior Court asking that the election be invalidated, but the suit failed.

Subsequently, the CSEA, the Retirement System Board, this committee, and other interested parties memorialized Congress to eliminate a 1960 deadline in federal law for providing retroactive Social Security to members of state and local systems electing to co-ordinate with Social Security. The federal law was amended by Congress eliminating any deadline. It now authorizes a maximum of five years of retroactive coverage dating from an agreement to co-ordinate. (This and other 1960 changes made by the Congress in the Social Security law are reviewed by the California Legislative Counsel in Appendix E to this report.)

During its many hearings in 1960, the Assembly Interim Committee on Civil Service and State Personnel heard the pros and cons of co-ordination in testimony from scores of witnesses, including Mr. Payne of the State Employees' Retirement System, Chief Counsel John McElheney, President Ray Rusk and staff member George Feinberg of the California State Employees Association, Otto Hahn, International Vice President, and Sam Hunegs, International Representative of the American Federation of State, County and Municipal Employees AFL-CIO; President Frank D. Rohmer, Secretary-Treasurer Jim Verby, and Dr. R. Thayne Robson, for the California State Employees for Social Security, Bud Aronson, Secretary-Treasurer, Union of State Employees, AFL-CIO. Many other interested individuals also testified and transcripts of all hearings are available at the Capitol office of the committee chairman, Charles W. Meyers.

While stressing that his board has long felt that gains of co-ordination outweigh disadvantages for most state employees, Mr. Payne outlined advantages and disadvantages as follows.

Advantages

(1) Immediate survivors protection to most state members of the system; (2) increased retirement benefits of little or no immediate increase in cost for present members; (3) early qualification for more maximum retirement benefits for many career state employees due to retroactive coverage; (4) greater employment mobility for state employees and prospective state employees; (5) better competitive recruiting position for the State as an employer, this will be increasingly true as coverage becomes more widespread among public employees; (6) short-term employees retain Social Security credit on leaving state

service, the experience under the State Employees' Retirement System is that most withdraw contributions thereby terminating rights to benefits, (7) Social Security benefits favor lower salary employees, (8) the wife's Social Security benefits supplement the retirement allowance, (9) survivors allowance permits retiring members to select lesser optional settlement thereby increasing his retirement income

Disadvantages

(1) Schedule increased cost from 3 percent on the first \$4,800 of earned income to $4\frac{1}{2}$ percent by 1969, (2) probability of further future cost increase to both employee and employer, (3) difficulty in maintaining appropriate co-ordination if Social Security program is radically changed, (4) difficult for the member to predict and compute the retirement benefit, (5) control in Congress prevents the Legislature from exercising policy decisions in the retirement field, (6) minimum age for retirement is 65 or 62 for women under Social Security as compared to 55 under the State Employees' Retirement System, and (7) nonrefund of contributions for separated employees. The taxes paid to the Social Security program are not returned either to the employee or the employer in the event the employee should leave current employment, or he should die before qualifying for any benefits.

Mr Payne estimated that under co-ordination as proposed by his board, the added coverage eventually will cost the State some \$10 million a year.

He noted the recent growth of Social Security coverage among public employees of California.

"I think last year as a result of the legislative action, the growth was the most rapid of any one year, since we covered the classified school employees of all school districts in California, with the exception of Los Angeles city school employees who requested to be deleted from such coverage action. This amounted to somewhere between 1,600 and 1,800 school districts.

"At the present time in California, the employees of three out of four cities are covered by Social Security. The employees of four out of five counties are covered by Social Security. And about one-third of all other governmental jurisdictions are covered by Social Security.

"I think from this review of coverage, it seems almost inescapable that coverage of public employees is proceeding at a rate which will eventually result in the coverage of almost all of the public employees in the United States, with the possible exception of federal employees.

"A good share of state employees are still interested in Social Security coverage and are making strenuous efforts to obtain it."

Mr Rohmer, stressing the advantages of Social Security co-ordination, asked that the Legislature allow individual employees a free choice, without further referendum. He said there was much confusion and misinformation surrounding the 1959 referendum, and argued that in any event it was unfair for the majority to deprive the minority of a choice just because the majority favored the present system. Mr Rohmer said he spoke for 25,000 state employees. He identified himself

as president of the California State Employees for Social Security and vice president of Council 256 of the American Federation of State, County and Municipal Employees, AFL-CIO.

Jim Verby, Secretary-treasurer of the California State Employees for Social Security, concurred with Mr Rohmer and said many employees voted against their own best interests at the referendum due to confusion and misleading information. He said the state costs under consolidation, starting at about \$1,000,000 a year and reaching \$10,000,000 by 1969 due to projected increases in the Social Security tax rates, would be less costly than providing similar benefits under SERS.

Dr R Thayne Robson, a member of the economics department at the University of California at Los Angeles, speaking for himself, asked the committee "that legislation be enacted permitting each of the current employees, state employees here in California, the right to choose on an individual basis whether or not they desire coverage under a co-ordinated program."

Dr Robson cited problems facing individuals who may wish to transfer from a position covered by Social Security to a state job, and vice versa. This problem, he said may prevent people from taking state jobs, thus losing Social Security coverage. Also a state employee may be reluctant to take a position elsewhere in industry that may be more advantageous to him, and which he would be more inclined to take if he had a continuity in protection or in some part of his protection that covered during the job change.

Dr Robson said the ultimate \$10 million increase in state costs under a consolidated program "could buy infinitely more benefits through co-ordination than it can through spending it in SERS." Dr Robson and his supporting speakers said they believed between 60 and 70 percent of all present state employees would benefit under co-ordination.

During the course of its hearings, the committee received the following telegram from Thomas L. Pitts, secretary-treasurer of the California Labor Federation, AFL-CIO:

"Consistent with the position maintained before the Legislature at recent general sessions, we urge your committee to sponsor legislation at the 1961 Session which will provide for co-ordination on the same formula combined in A B No. 2062, passed last year, but without the emasculating provision in that bill which denied to state employees desiring co-ordination the federally granted privilege to divide for this purpose without first requiring a systemwide referendum. The great injustice of that provision is now fully apparent in the explosive division that has culminated in the state service since the referendum last year, and the resultant adverse effect on state employee morale. Valuable time has been lost because of the expiration of the retroactive coverage provisions available to public employees in the Federal Social Security Law. The AFL-CIO is working diligently in Washington, D.C., to provide for the necessary extension of these retroactive provisions. In the meantime, we believe your committee has an obligation to state employees to correct last year's wrong and to prepare for the introduction of legislation at the next session which will secure for every state employee the opportunity to benefit from the advantages of co-ordination as he or she may choose in accordance with

the federal privilege already in the law. We urge also that your committee take immediate action to communicate your support of retroactive extension to the California delegation in Congress."

Representatives of the California State Employees Association denied allegations that the 1959 referendum had been unfair and that the CSEA had misled its membership.

CSEA President Ray L. Rusk said the organization had presented both sides of the issue in its publications and meetings, and filed the following letter with the committee:

DEAR MR. MEYERS:

At the April 26, 1960, meeting of your committee at Napa, you requested interested groups to state the reasons for their position on the Social Security co-ordination issue.

As was indicated at your Napa meeting, we recognize that there are advantages and disadvantages to co-ordination of the state system with Social Security. You may recall from previous testimony references to the opinion poll conducted by our organization in November 1958. At that time the advantages and disadvantages were stated for the benefit of our members. They were as follows, and these are the arguments that were presented pro and con to CSEA members in connection with Proposal B which was the proposal "Shall there be co-ordination of Social Security and SERS."

Arguments for Proposal B

- 1 The co-ordination proposal would provide survivors' benefits and increased service and disability retirement benefits for many state employees. Also, there would be retirement benefits for dependents.
- 2 Co-ordination takes advantage of 1957 Social Security amendments which allow employees who want OASDI coverage to get it without affecting others who do not want such coverage.
- 3 This voluntary choice allows current SERS members to elect the coverage which yields the greatest combined benefits. For example, a married couple working for the State can, through the husband's choosing the plan and the wife not choosing it, enable the wife to receive the OASDI wife's benefit in addition to her full SERS allowance.
- 4 Co-ordination allows continuity of Social Security coverage for employees who go from state service to private employment or other governmental employment covered by Social Security, as well as for those who enter state service from covered employment.
- 5 Proposal B will cost both employees and the State less than Proposal A. This lower state cost will improve the possibility of getting legislative action in 1959.
- 6 OASDI can be obtained for state employees on favorable terms only if we get legislation in effect before January 1, 1960. The present federal law granting OASDI coverage retroactive to January 1, 1956, requires coverage in effect before 1960.

- 7 Possibility for future benefit improvements should be good, since history has shown that OASDI benefits have been increased regularly
- 8 OASDI benefits are exempt from state and federal income taxes
- 9 Co-ordination's retroactive features would give many SERS members a refund of part of their SERS contributions since January 1956

These were the arguments that we presented to our members favorable to the co-ordination

Arguments That Were Presented in Opposition or Against Co-ordination

- 1 Co-ordination would create two separate groups of state employees with different retirement benefits. As time goes on, the State would contribute more for those under OASDI than for those under SERS alone
- 2 SERS members choosing to remain under the existing system would be in a diminishing group. It may be more difficult for CSEA to get future legislation to improve retirement benefits for this group as it became smaller
- 3 Acts of Congress and regulations of the Federal Social Security Administration would affect the portion of our retirement allowance coming from OASDI, whereas now all benefits and costs are entirely under state control
- 4 Recent history shows a tendency in Congress to raise OASDI contribution rates
- 5 A retired SERS member aged 65 to 72 who has OASDI coverage and who secures employment loses a month's OASDI portion of his aggregate retirement allowance for every month in which \$100 is earned after \$1,200 has been earned during the year. He also pays OASDI taxes on these earnings
- 6 OASDI contributions are not refundable on separation from state service or at death
- 7 Co-ordination requires future state employees to come under OASDI on entering state service. If they were not required to do so, some might gain certain advantages by qualifying for OASDI benefits independently through a spouse, or concurrent outside employment or from OASDI coverage preceding or following the period of state service
- 8 For many state employees future scheduled OASDI tax increases will more than offset the refund of past SERS contributions under co-ordination

The results of the poll indicated that our membership felt that the disadvantages outweighed the advantages. And the position of the association with respect to 1959 legislation relating to co-ordination was based on this consideration.

Nevertheless, some of our members, as is their right, have asked their association to re-examine the facts and reconsider the position taken in 1959. We are now in the process of making such a re-examination. The information developed will be made available to the members of our governing body, the general council, which

convenes at San Diego November 12-13, 1960. The future position of the association depends on the action of this body.

We welcome the interest of the committee in this problem, and look forward to presenting to our members the facts, figures and other considerations which may be derived through your investigation, through our study and we hope that the decision we reach will be based upon these facts and upon this information.

RAY L. RUSK

CSEA Chief Counsel John W. McElheney said that at no time during its passage through the 1959 Legislature did any of the groups now criticizing the referendum object to A.B. 2062 or its referendum clause.

"It didn't come out the way they wanted it, so we now hear from them," he said.

Mr. Rusk traced the history of the CSEA position on Social Security co-ordination. He noted that the membership of the State Employees' Retirement System turned down integration, on the offset basis, in 1955. After the Congress permitted local system to divide and give individual employees a choice, the CSEA conducted an opinion poll among its membership that was "admittedly not completely conclusive."

Subsequently, the CSEA General Council, the supreme governing body of the 78,000-member employee organization, decided to seek survivorship benefits within the state system instead of Social Security co-ordination. On that basis, the CSEA entered the 1959 Legislature with a mandate from its General Council to support legislation along these lines.

It was this legislation, sponsored by CSEA, into which was amended the referendum procedure.

According to Mr. Rusk.

"This still meant that future employees mandatorily would have to come under the provisions of the system, had the referendum at that time been affirmative.

"Now, while the association had a mandate to oppose co-ordination, the opposition to the revised, or compromise bill was withdrawn when the election procedure was proposed by Members of the Legislature."

At the November 12-13, 1960, meeting of the CSEA General Council, referred to in Mr. Rusk's letter above, which meeting was held after this committee concluded its public hearings, a resolution was adopted setting forth the CSEA's policy on retirement legislation at the 1961 Legislature.

The resolution supports a free choice for each state employee as to whether he wants Social Security coverage or not—without a referendum—but subject to conditions, including a 20 percent increase in benefits for those who choose nonco-ordinated benefits within SERS.

The SERS board has estimated that a retroactive change to the 1/50th formula under SERS, as long advocated by the CSEA, would cost the State \$16.5 million annually if all members of the system including retired members were affected.

The full resolution of the CSEA General Council follows.

WHEREAS, All CSEA members are entitled to equal consideration by the association and all SERS members are entitled to equivalent returns on their investments, and

WHEREAS, It is the objective of the association to obtain the retroactive 1/50th formula; and

WHEREAS, A large group of state employees have expressed a desire to obtain OASDI co-ordinated with SERS on a 1/60th-1/90th basis, and

WHEREAS, Fear has been expressed that co-ordination might impair the rights and benefits of those members of SERS not co-ordinating; and

WHEREAS, Legislation which does not attain the objectives of this resolution may be passed and be unacceptable to the membership; now, therefore be it

Resolved, That policy 3 B 41 be amended to read as follows: It is the continuing policy of the association to vigorously oppose any further legislation to integrate or co-ordinate the State Employees' Retirement System with OASDI unless such legislation shall include all of the following:

1 Nonco-ordinated benefits at least equal to the retroactive 1/50th formula with survivor benefits

2 Co-ordinated benefits at least equal to the 1/60th-1/90th formula

3 That it be the intent of the legislation that there shall be no impairment of any of the rights and benefits of the present members of SERS

4 Optional choice of the retroactive 1/50th or co-ordinated formulas for present employees; and, be it further

Resolved, That if all four items listed above are not enacted or any other legislation for co-ordination with SERS is enacted, then the legislation must provide for a referendum on such legislation as is enacted, and, be it further

Resolved, That legislation be introduced into the 1961 Session of the Legislature to carry out the intent of this policy

PART III

RETIREMENT ALLOWANCE INCREASES

RETIREMENT ALLOWANCE INCREASES

RECOMMENDATION

The committee recommends enactment at the 1961 Session of the following measure increasing retirement allowances of already retired state employees and increasing minimum retirement benefits under the state system, to reflect increased living costs

Legislative Counsel's Digest—State Employees' Retirement System

Adds Secs 21251 6 and 21258 3, Gov C

Provides that retirement allowances of members who retired on or before July 1, 1960, shall, in addition to any other increases authorized at the 1961 Regular Session, be increased by amounts ranging from 2-10 percent based on date of retirement Provides that no increase shall exceed \$50 in the aggregate

Permits waiver of increase in benefits by member

Provides a minimum service retirement allowance of \$900 per year to members who retire at age 60 with 10 years of service with \$90 a year increases for each additional year up to 20 years of service where the minimum is increased from the present \$1,200 per year to \$1,800 per year

Makes sections applicable to contracting agencies only on amendment of their contracts with the board to so provide.

PROPOSED ASSEMBLY BILL

An act to add Sections 21251 6 and 21258 3 to the Government Code, relating to the State Employees' Retirement System

The people of the State of California do enact as follows:

SECTION 1 Section 21251 6 is added to the Government Code, to read:

21251 6 (a) Every retirement allowance payable for time commencing on the effective date of this section to or on account of any member who has retired on or prior to July 1, 1960, is hereby increased by a monthly amount which, when added to any other increases in such retirement allowance made by the Legislature at its 1961 Regular Session, equals the percentage increase set forth in the following table opposite the period during which the member's retirement became effective, if the retired member is entitled to be credited with 20 years or more of state service, or, if the retired member is entitled to be credited with less than 20 years of state service, by an amount which, when added to any other increases in such retirement allowance made by the Legislature at its 1961 Regular Session, bears the same ratio to the percentage increase set forth in the following table opposite the period during which the member's retirement became effective that the number of

completed years of state service with which the member is entitled to be credited bears to 20 years.

<i>Period during which retirement became effective</i>	<i>Percentage of increase in monthly retirement allowance where member is entitled to be credited with 20 or more years of state service</i>
On or prior to July 1, 1956	10%
Twelve months ended July 1, 1957	8%
Twelve months ended July 1, 1958	6%
Twelve months ended July 1, 1959	4%
Twelve months ended July 1, 1960	2%

No increase under this section shall exceed in the aggregate the sum of fifty dollars (\$50) per month.

(b) This section shall not apply to any contracting agency, nor to retirement allowances or special death benefits payable to or in respect to the retired or deceased employees of any contracting agency, unless and until the contracting agency elects to be subject to its provisions by amendment to its contract with the board, made as provided in Section 20461.5, except that an election among the employees is not required, or by express provision in its contract with the board.

Any increase in allowances provided by this section shall not take effect prior to the date the contract is amended to subject the contracting agency to the provisions of this section.

(c) Any person receiving an allowance subject to the increase provided for herein may elect to waive such increase and continue to receive their allowance unmodified by the provisions of this section.

(d) The board shall compute the amount by which benefits paid pursuant to this section exceed the benefits which would otherwise be payable and shall charge any such excess against the contributions of the State so that there shall be no increase in contributions of members by reason of benefits paid pursuant to this section.

SEC 2 Section 21258.3 is added to said code, to read:

21258.3 (a) The retirement allowance referred to in this section excludes that portion of a member's service retirement annuity which was purchased by his accumulated additional contributions.

(b) If a member entitled to credit for prior service retires after attaining the compulsory age for service retirement applicable to him, or if a member is entitled to be credited with 10 years of continuous state service and retires after attaining age 60, and his retirement allowance is less than nine hundred dollars (\$900) per year and less than his final compensation, his prior or current service pension, as the case may be, shall be increased so as to cause his total retirement allowance from this system, and from the retiring annuities system of the university, if any, to amount to nine hundred dollars (\$900) per year, or his final compensation, whichever is less. For each additional year of continuous state service beyond 10 years, his prior or current service pension, as the case may be, shall be increased so as to cause his total allowance from this system, and from the retiring annuities system of the university, if any, to be increased by an additional ninety dollars (\$90) a year up to 20 years of continuous state service for which time

his prior or current service pension, as the case may be, shall be increased so as to cause his total retirement allowance from the system, and from the retiring annuities system of the university, if any, to amount to one thousand eight hundred dollars (\$1,800) per year, or his final compensation, whichever is less

(c) Subdivision (b) of this section applies to state members and also to local members if the contract between the board and the employing-contracting agency so provides, or if the employing contracting agency elects to subject itself and its employees to the provisions of subdivision (b) by amendment to its contract with the board, made as provided in Section 20461.5

If a local member to whom this section applies is employed by more than one contracting agency, his aggregate retirement allowances shall be taken into account irrespective of the employer.

FINDINGS

The annual report of the Board of Administration of the State Employees Retirement System for 1957, on page 7, contains the following statement

"Each of the last two sessions of the Legislature has found it necessary to make increases in allowances being paid persons already on retirement. These increases were provided to alleviate loss in purchasing power due to inflation. If adjustments are to continue to be made as an answer to inflation, there should be serious consideration given to an overall plan to provide for a retirement allowance which can fluctuate in an orderly manner with changes in living costs."

The board in its report for 1958, on page 16, again refers to the subject of "Cost of Living Pensions," and makes the statement:

"The system is valuating the cost of such a program and will have cost information available when the Legislature is in session."

The report goes on to state that a review of the State Retirement System legislation indicates quite clearly that its authors, in 1931, did not have in mind the effects of possible future inflation which has, as all now recognize, materially reduced the purchasing power of fixed retirement allowances. No provision was then made to take care of such conditions as they have subsequently developed.

As the Retirement Board indicated in its 1957 report, the Legislature has heretofore recognized the inequity, under existing conditions of the economy, of a fixed income allowance for retired state employees. It is obvious, the board states, that this problem cannot be met or solved by occasional or intermittent legislative appropriations.

Accordingly, the Assembly Subcommittee of Civil Service and State Personnel on State Retirement Benefits, under the chairmanship of Edwin L. Z'berg, held two meetings, one on January 25, 1960, and another on October 20, 1960, to consider this problem. Assemblyman Z'berg, prior to the January 25 meeting stated that the Legislature in 1953, 1955 and 1957, had increased retirement benefits in order to meet the rising cost of living, and it would appear that a way could be found to automatically increase these benefits to retired employees,

so that legislation would not be necessary at every general session. He further stated that the State Personnel Board report to the Governor this year indicated that while fringe benefits for employees have been rising in private industry, the State finds itself in the unique position of a decrease in the cost of fringe benefits due to the increased return on the money invested by the State Employees' Retirement System. The report shows a decrease of almost \$5,000,000 in fringe benefit costs for the years 1958 and 1959. Consideration should also be given, Z'berg said, to the possible use of some of this money for increased retirement benefits, either by automatic cost-of-living increases or by some other means.

As a result of the January 25 meeting, a request was made to the State Personnel Board to obtain a report on the investment operations of the State Employees' Retirement System. This report was to be made by Moody's Investors Service, and it was agreed that as soon as the report was available, another meeting would be held to arrive at a definite recommendation. Following is the letter of recommendation submitted by the Chairman, Edwin L. Z'berg on March 23, 1960, to the Chairman of the Committee, Charles W. Meyers.

DEAR MR. MEYERS:

As a result of the meeting of our subcommittee on retirement benefits, the following recommendations are submitted, with a request that they be made a part of a hearing of the full committee:

1. The minimum retirement allowance for any employee who retires at age 60 with 20 years of service be raised from \$100. Proportionate raises would be granted those who retired at the minimum age limit of 55 through 59.

2. A one-time increase in benefits for employees presently retired be recommended to the full Legislature.

3. This subcommittee remain as constituted for an additional hearing this fall. This committee feels that the proposed legislation presented to it by the Retired State Employees Association which would tie the increase in retired employees to a general salary increase appears to be an equitable solution to the problem of inflation as it relates to retired employees. However, we have requested the State Employees' Retirement System to have a financial survey of their portfolio of investments to determine if the maximum return is being received from the money invested. Once this survey has been accomplished our subcommittee would like to meet again to determine if enough additional funds are available to implement this program without the necessity of additional appropriations from the General Fund.

Recommendation No. 3 is predicated on the fact that while our committee is in complete agreement as to the fact that some automatic adjustment of retirement allowance should be made, the ultimate cost would have to be borne either by the State or equally by the State and its active employees. Mr. Payne, of the State Employees' Retirement System, requested his board to have a survey made of their current investment portfolio by a reputable

financial organization. Before attempting to determine where increased financial support of such a program can be obtained, we would like to see the results of this survey. It is anticipated that these results will be available this fall, and will be presented to our subcommittee at that time.

Respectfully submitted,

EDWIN L. Z'BERG, *Chairman*

Upon receipt of the report from Moody's Investors Service (Appendix F), a meeting was held by the subcommittee on October 20, 1960, at which time the report was presented by Mr. William E. Payne of the State Employees' Retirement System, and the proposed bill was discussed and approved by the subcommittee, with a recommendation to the full committee that the bill be introduced as proposed.

PART IV

MISCELLANEOUS BILLS

MISCELLANEOUS BILLS

(Referred to the Committee for Study by the 1959 Legislature)

1—**A.B. 2257—Introduced by Mr. Meyers—Affecting industrial disability and death benefits under the State Employees' Retirement System, and A B 2746—introduced by Mr Meyers—increasing benefits payable upon the death of a person receiving a retirement allowance under the State Employees' Retirement System**

Recommendation

That action on these measures be held in abeyance pending action taken by the 1961 Legislature on other measures affecting retirement benefits, particularly the question of co-ordination with Social Security

Findings

The committee devoted considerable hearing time to the above measures and alternative approaches presented by the committee staff. For many reasons, including cost factors involved in other legislation affecting state employees that will be before the 1961 Legislature, the committee felt no action should be taken at this time on these bills.

2—**A.B. 2745—Introduced by Mr. Meyers—Relating to the State Employees' Retirement System.**

Recommendation

The committee takes cognizance of the problem involved and approves such legislation in principle, but without any retroactive feature that would provide for refunds of contributions previously made.

Findings

At present a state employee who is absent from state service for job-connected injury or illness receives certain workmen's compensation benefits. If the employee has sick leave or vacation credits, these may be used to bring his combined total of benefits up to the regular salary level. The employee makes Retirement Fund contributions only on the sick leave and vacation credits he uses during the absence. If the sick leave and vacation credits are used entirely before the employee is able to return to work, no retirement credit is given to him during that interim. This bill would provide for automatic crediting of service in case of such absences.

In testimony before the committee, William E. Payne, executive officer of the State Employees' Retirement System, pointed out that one of the basic principles of the retirement system is that the member pay for one-half the cost of his current service credit and that the State pay any additional cost. This bill, which provides service credit without interest cost to the member, tends to be contrary to established principle of the system. Mr. Payne particularly impressed upon the committee a feeling (supported by the committee) that there should be no retroactive feature in any such legislation. Mr. Payne estimated the cost to the State under the bill would be about \$200,000 annually.

John W. McElheney, general counsel for the California State Employees' Association, sponsors of A. B. 2745, stressed that the legislation concerns only the individual injured in the course of employment.

Mr. McElheney said all the employee asks under this measure "is that he be given credit and allowed to pay his share and the State would pay their share after he goes on workmen's compensation at the reduced rates, as compared to his salary of course, for the length of time that he is on compensation until he returns to the job for an injury that he received in connection with the performance of his duties."

Mr. McElheney said he will take into account questions raised by committee members in rewriting the legislation for introduction by the California State Employees' Association at the 1961 General Session.

3—A.B. 2750—Introduced by Mr. Meyers—Relating to the State Employees' Retirement System.

Recommendation

The committee favors the principle of this legislation and suggests that the measure be reintroduced, provided it is amended to apply only to state college faculty members, which, according to testimony by sponsors, was the original intent.

Findings

This provides that a member of the State Employees' Retirement System excused from all or part of his duties (such as a college professor on sabbatical leave) may obtain full retirement credits for the absent period by contributing to the retirement system the amount that would have been required had the employee not been absent or working part-time.

Dr. Lawrence Turner, executive dean of Humboldt State College, said he felt passage of such legislation would help alleviate teaching staff recruitment problems in the state colleges by providing an important but not costly fringe benefit.

4—A.B. 2550—Introduced by Mr. Crawford—Relating to the State Civil Service Appointments.

Recommendation

That action on the bill be postponed indefinitely, and that the bill remain with the committee.

Findings

This bill provides that only names of the three persons standing highest on the employment list shall be certified to the appointing authority; and provides where the person appointed is not the highest of the persons certified, the highest person shall be notified in writing of the appointment and the reasons therefor by the appointing power and they shall have the right to appeal to the State Personnel Board within a specified time.

The author told the committee he introduced the measure after hearing complaints in San Diego from some state employees who felt they had been discriminated against in promotions. However, the Personnel

Board presented the committee with a report of promotional appointments in state civil service for the period of January through September, 1959, which indicated to the committee's satisfaction that the problem was not a major one. It was agreed that no legislation would be sponsored along this line by the committee although Chairman Meyers observed it is a "matter which needs very careful watching."

5—A.B. 2747—Introduced by Mr. Meyers—Relating to the State Civil Service.

Recommendation

That the problem be recognized but that legislation be held in abeyance pending outcome of experiment with creation of review committees in certain selected departments.

Findings

This bill, introduced at the request of the California State Employees' Association, would require the Personnel Board to fix a schedule of uniform penalties for application in state civil service disciplinary proceedings and would authorize the board to designate minimum and maximum penalties.

Arguments presented to the committee in favor of the bill declared there are at present 432 persons authorized to take punitive action in the 49 governmental agencies of the State, and that there appears to be a lack of uniformity in application of punitive action against state employees.

The chief argument against the bill is that it would be too complex to try to formulate a schedule of all possible penalties for all possible offenses, and formulation of minimums and maximums along these lines would necessarily have to be too broad to serve any useful purpose.

During the course of this committee interim study, the committee staff met with representatives of the Personnel Board, the State Employees' Association, and the Committee on Personnel and Training of the Governor's Council. This group suggested a possible solution to the problem, which the committee supports.

Under this voluntary plan, review committees will be created experimentally in several large departments that will act as advisory committees to department directors in maintaining uniform penalties within each department.

Mr. McElheney, representing the State Employees' Association, endorsed this approach. Roy W. Stephens, assistant secretary of the Personnel Board, said the reaction of all members of that board was favorable to the plan.

Mr. Stephens also noted that although sponsors of the legislation were right in saying that some 435 names of executives are on file with the Personnel Board as names that can be accepted in connection with taking punitive actions, in most cases punitive actions must clear through department directors so that large numbers of supervisors "are not indiscriminately and separately taking punitive actions."

APPENDICES

APPENDIX A

An act to add Part 5 (commencing at Section 22750) to Division 5 of Title 2 of the Government Code, relating to medical and hospital care for state officers and employees

The people of the State of California do enact as follows

SECTION 1. Part 5 (commencing at Section 22750) is added to Division 5 of Title 2 of the Government Code, to read:

PART 5 THE STATE EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT

CHAPTER 1 STATE EMPLOYEES' HEALTH BENEFITS

Article 1 General Provisions and Definitions

22750 This part may be cited as the State Employees' Medical and Hospital Care Act.

22751. It is the purpose of this part:

- (a) To promote increased economy and efficiency in the state service
- (b) To enable the State to attract and retain qualified employees by providing health benefit plans similar to those commonly provided in private industry
- (c) To recognize and protect the State's investment in each permanent employee by promoting and preserving good health among state employees

22752 The provisions of this part are not to be construed as authorizing the State to undertake any program of self-insurance in connection with hospital and medical care benefit plans for state employees.

22753 The provisions of this part shall become operative with respect to employees and annuitants of the University of California only upon the filing with the board of a resolution of approval of such applicability adopted by the Regents of the University of California.

22754 As used in this part the following definitions, unless the context otherwise requires, shall govern the interpretation of terms.

(a) "Board" means the Board of Administration of the State Employees' Retirement System

(b) "Employee" means any officer or employee of the State of California or of any agency, department, authority, or instrumentality of the State including the University of California, except persons employed on an intermittent, irregular or less than half-time basis, or employees similarly situated, or employees in respect to whom contributions by the State for any type of plan or program offering prepaid hospital and medical care is otherwise authorized by law.

(c) "Carrier" means a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner of the State, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing at Section 11491) of Part 2 of Division 2 of the Insurance Code, or nonprofit

membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, which is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

(d) "Health benefits plan" means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangement provided by a carrier for the purpose of providing, arranging, paying for, or reimbursing the cost of basic hospital and medical care.

(e) "Annuitant" means:

(1) Any person who has retired while an employee and who receives any retirement allowance under any state or University of California retirement system to which the State was a contributing party

(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in subdivision (1), or as the survivor of a deceased employee receiving an allowance under Section 21365.5 of this code

(f) "Family member" means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(g) "Employee organization" means an association or other organization of employees in which membership is open to employees or annuitants of the State, and which is not organized solely or principally for the purpose of obtaining prepaid hospital and medical care.

Article 2. General Powers and Duties of the Board of Administration

22771. The provisions of this part shall be administered by the board. The members of the board shall receive no salary for performance of their duties and responsibilities under this part, but shall be reimbursed for actual and necessary expenses incurred in connection therewith.

22772. All laws governing the organization, procedures, and administrative duties and responsibilities of the board shall be applicable to the board in its administration of the provisions of this part, to the extent that they are not in conflict with or inconsistent with the provisions of this part.

22773. The board shall have all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon it under this part

22774. The board shall, in accordance with this part, approve health benefits plans and may contract with carriers offering basic health benefits plans

Irrespective of the provisions of Sections 1090 and 1091 of this code, the board member who is an officer of a life insurer may participate in all board activities in administering the provisions of this part, except

that he shall not vote on the question of whether a contract should be entered into or approval should be given concerning any plan.

22775. The board shall, pursuant to the Administrative Procedure Act, adopt all necessary rules and regulations to carry out the provisions of this part, including but not limited to establishing the scope and content of a basic health benefits plan, regulations fixing reasonable minimum standards for health benefits plans, regulations fixing the time, manner, method and procedures for determining whether approval of any plan should be withdrawn, and regulations pertaining to any other matters it may be expressly authorized or required to provide for by rule or regulation by the provisions of this part.

In adopting such rules and regulations the board shall be guided by the needs and welfare of individual employees, particular classes of employees, and of the State, as well as prevailing practices in the field of prepaid medical and hospital care.

22776. The board shall withdraw its approval of any health benefits plan if it finds that the standards prescribed therefor are not being complied with, that claims accrued or to accrue will not be paid, or for other good cause shown. The board shall give reasonable notice of its intention to withdraw approval of a plan to any carrier, employee organization, or organization of physicians which may be directly interested, to the persons enrolled in the plan, and to such other persons and organizations as the board may deem necessary and proper. The notice shall state the effective date of, and the reason for, the withdrawal. Approval of a health benefits plan shall not be withdrawn except after such notice, and after all interested parties have been afforded reasonable opportunity for public hearing on the question. The hearings shall be conducted, insofar as practicable, pursuant to the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of this code.

22777. The regulations of the board shall also make provision respecting the beginning and ending dates of coverage of employees and annuitants and family members under health benefits plans, and may permit coverage to continue, exclusive of any temporary extension of coverage otherwise authorized under this part, until the end of the pay period in which an employee is separated from service or until the end of the month in which an annuitant ceases to be entitled to an annuity; and in case of the death of an employee or annuitant may permit a temporary extension of the coverage of family members of his family for a period of not less than 30 days.

22778. The board shall make available to employees and annuitants eligible to enroll in any health benefit plan pursuant to this part such information, in such form as it may deem satisfactory, as will enable the employees or annuitants to exercise an informed choice among the various types of health benefits plans which have been contracted for or approved. Each employee or annuitant enrolled in a health benefits plan shall be issued an appropriate document setting forth or summarizing the services or benefits to which the employee or annuitant or family members are entitled to thereunder, the procedure for obtaining benefits, and the principal provisions of the plan affecting the employee, annuitant, or family members.

Article 3 Health Benefit Plans and Contracts

22790 The board may contract with carriers for basic health benefit plans or approve basic health benefit plans offered by employee organizations, provided that the carriers have operated successfully in the prepaid hospital and medical care field prior to the contracting for or approval thereof. Such plans shall include hospital benefits, surgical benefits, in-hospital medical benefits, outpatient benefits, obstetrical benefits, and may include other benefits including, but not limited to, benefits offered by a bona fide church, sect, denomination or organization whose principles include healing entirely by prayer or spiritual means. The board shall approve any basic health benefit plan in existence at the operative date of this part which meets the requirements of this part and the minimum standards and other rules and requirements prescribed by the board, and for which payroll deductions were authorized under Section 1156 of this code.

22791 The basic health benefit plans which may be approved by the board shall include the following types.

(a) One or more statewide service benefit plans under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services rendered to employees or annuitants or members of family, or under which, under certain conditions, payment is made by a carrier to the employee or annuitant or member of family.

(b) One or more statewide indemnity benefit plans under which a carrier agrees to pay certain sums of money, not in excess of actual expenses incurred, for health services.

(c) Comprehensive group-practice prepayment plans which offer benefits, in whole or in substantial part, on a prepaid basis, with professional services thereunder provided by physicians practicing as a group in a common center or centers. Such a group shall include physicians representing at least three major medical specialties who receive all or a substantial part of their professional income from the prepaid funds.

(d) Individual practice prepayment plans which offer health services in whole or in part on a prepaid basis, with professional services thereunder provided by individual physicians who agree, under such conditions as may be prescribed by the board, to accept the payments provided by the plans as full payment for covered services rendered by them. Irrespective of any other provision of law, the sponsors of a plan approved under this subsection may reinsure the operation of such plan with an admitted insurer authorized to write disability insurance, provided that the premium for such insurance shall include the entire prepayment fee.

22792 The board may, without compliance with any provisions of law relating to competitive bidding, enter into contracts with carriers offering health benefit plans. Every such contract shall be for a uniform term of at least one year, but may be made automatically renewable from term to term in the absence of notice of termination by either party.

22793 Each contract shall contain a detailed statement of benefits offered and shall include such maximums, limitations, exclusions, and

other definitions of benefits as the board may deem necessary or desirable

No contract shall be made or plan approved which excludes any person because of race, sex, or, at the time of first enrollment, because of age or health status. Transfer of enrollment in any plan shall be open to all employees and annuitants in accordance with the provisions of Section 22813 of this code

No contract shall be made or plan approved which does not offer to each employee whose enrollment in the plan is terminated due to separation from state service, and to each annuitant, a temporary extension of coverage during which he may exercise the option to convert, without evidence of good health, to a nongroup contract providing health benefits. An employee or annuitant who exercises this option shall pay the full periodic charges of the nongroup contract, on such terms or conditions as are prescribed by the carrier and approved by the board

22794 Rates charged under any health benefits plan shall reasonably reflect the cost of the benefits provided. Rates determined for the first contract term shall be continued for subsequent contract terms, except that they may be readjusted for any subsequent term, based upon past experience (which, in the case of community-rating plans, shall be the experience of the total membership upon which the rates of such plans are based) and upon benefit adjustments under the subsequent contract. Any readjustment in rates shall be made at a time and manner which, in the judgment of the board, is consistent with the general practice of carriers which issue group health benefit plans to large employers

Article 4 Coverage

22810 Any employee or annuitant may, in the manner, and under such eligibility rules as the board may by regulation prescribe, enroll in an approved health benefits plan, either as an individual or for self and family. The regulations may provide for the exclusion of employees on the basis of the nature and type of their employment or conditions pertaining thereto, such as, but not limited to, short term appointments, seasonal or intermittent employment, and employment of a like nature, but no employee or group of employees shall be excluded solely on the basis of the hazardous nature of the employment. Any such enrollment shall authorize the deduction of the contributions required under this part from the employee's or annuitant's salary or retirement allowance.

Any annuitant who, at the time he became an annuitant was enrolled in a health benefits plan, may continue his enrollment as provided by regulations of the board, without changes in premium rates or benefit coverage

The board shall, by rule and regulation, make such provision as it deems necessary to eliminate or minimize the impact of adverse selection which would affect any plans approved or contracted for, because of enrollment of annuitants who acquired that status prior to the effective date of this part

22811 If an employee or annuitant has a spouse who is an employee or annuitant, each spouse may enroll as an individual. No person may be enrolled both as an employee or annuitant and as a family member.

A family member may be enrolled as such in respect to only one employee or annuitant

22812 A request for change in coverage based upon a change in the family status of any employee or annuitant, or of any employee or annuitant and members of family, enrolled in a health benefits plan may be made by the employee or annuitant upon application filed within 30 days after the occurrence of the change in family status or at such other times and under such conditions as may be prescribed by regulations of the board

22813 A transfer of enrollment from one health benefits plan to another such plan may be made by an employee or annuitant at such times and under such conditions as may be prescribed by regulations of the board

22814 An employee enrolled in a health benefits plan who is removed or suspended without pay and later reinstated or restored to duty on the ground that such removal or suspension was unjustified, unwarranted or illegal shall not be deprived of coverage or benefits for the interim, but any contributions otherwise payable by the State which were actually paid by him shall be restored to the same extent and effect as though such removal or suspension had not taken place, and any other equitable adjustments necessary and proper under the circumstances shall be made in premiums, subscription charges, contributions and claims

22815 If an employee or annuitant is dissatisfied with any action or failure to act which has occurred in connection with his coverage or the coverage of his family members under this part, he shall have the right of appeal to the board and shall be accorded an opportunity for a fair hearing. The hearings shall be conducted, insofar as practicable, pursuant to the provisions of Chapter 5 of Part 1, of Division 3 of Title 2 of this code.

22816 An employee enrolled in a health benefits plan under this part who is granted a leave of absence without pay under the State Civil Service Act and the rules of the State Personnel Board, or other comparable leave, shall be entitled to have his coverage and the coverage of any family members continued for the duration of the leave of absence upon his application, but only upon assuming payment of the contributions otherwise required of the State on account of his enrollment

Article 5 Contributions

22825 The State of California and each employee or annuitant shall contribute a portion of the cost of providing for each employee and annuitant the benefit coverage afforded under any health benefit plan which the board has approved or for which it has executed a contract pursuant to this part, and in which the employee or annuitant may be enrolled

The State's contribution shall be the amount necessary to pay the cost of a basic health benefits plan, or five dollars (\$5) per month for each employee or annuitant, whichever is the lesser. The State's contribution to the basic health benefits plan to each employee shall commence on the first day of the calendar month next following the completion of six months of employment by the State or the University of

California, provided the employment has not been interrupted by a break of more than one month, except that absence for military service shall not be considered a break.

The contribution of each employee and annuitant shall be the total cost per month of the benefit coverage afforded him under the plan less the portion thereof to be contributed by the State.

22826. The State of California shall, in addition to the contributions required by Section 22825, contribute additional amounts necessary to provide funds for the administration of this part, and for the establishment and continuation of the State Employees' Contingency Reserve Fund.

The additional contributions shall be payable on the basis of the amount chargeable on account of each such employee and annuitant for administrative expense and contingency reserve account purposes, as determined by the board.

22827. The contributions of each employee and annuitant shall be withheld from the monthly salary or retirement allowance payable to him.

The contributions of the State required on account of each employee shall be chargeable to the fund from which the salary of the employee is payable.

The contributions of the State required on account of each annuitant shall be payable from such funds as may be appropriated for that purpose.

Article 6. The State Employees' Contingency Reserve Fund

22840. For all plans which the State has entered into a contract there shall be maintained in the State Treasury a State Employees' Contingency Reserve Fund to which shall be credited, from time to time as determined by the board, amounts determined to be necessary to provide an adequate contingency reserve. The income derived from any dividends, rate adjustments, or other refunds by a plan shall be credited to the fund.

The board may invest funds in the State Employees' Contingency Reserve Fund in accordance with the provisions of law governing its investment of the Retirement Fund.

The State Employees' Contingency Reserve Fund may be utilized to defray increases in future rates, to reduce the contributions of employees and annuitants and the State, or to increase the benefits provided by any plan to the extent that amounts in the account are derived from that plan, as determined from time to time by the board.

The total amount to be credited to the State Employees' Contingency Reserve Fund for any one fiscal year shall not exceed 3 percent of the total of all contributions of the State and employees and annuitants during any fiscal year.

The total credited to the State Employees' Contingency Reserve Fund at any time shall be limited, in the manner and to the extent the board may find to be most practical, to a maximum of 10 percent of the total of the contributions of the State and employees and annuitants in any fiscal year. The board may undertake such action as will insure that the maximum amount prescribed for the fund is approximately maintained.

22841 Contributions of employees and annuitants, and contributions of the State not credited to the State Contingency Reserve Fund, shall be utilized to pay the premiums or other charges required to be paid carriers under health benefits plans. The State Controller shall suitably identify and remit the State's contribution for each employee or annuitant monthly to the insurer or insurers of, or others contracting to provide or arrange medical and hospital service under, such plans, together with amounts authorized by the employees and annuitants covered under such plans to be deducted from their salaries or retirement allowances for payment of their share of the cost of the plan.

SEC 2. The provisions of this act shall become operative on July 1, 1961.

APPENDIX B

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, October 6, 1960

HON. CHARLES W. MEYERS
Assembly Chamber

State Employees' Health Benefits—No. 4889

DEAR MR. MEYERS:

You have asked for an analysis of the proposed legislation to establish a program for state participation in providing group health insurance coverage for state employees, which was prepared under our Request 4416 and revised to some extent by action of the Assembly Interim Committee on Civil Service and State Personnel at its executive meeting of March 3, 1960.

Generally, the bill would add Part 5 (commencing at Section 22750) to Division 5 of Title 2 of the Government Code, to place under the jurisdiction of the Board of Administration of the State Employees' Retirement System a program whereby the State would, through group hospital and medical care plans contracted for or approved by the board, pay a portion of the monthly insurance premium for each participating employee or annuitant.* The bill would prescribe detailed standards to be met in order for plans to qualify for contract or approval, vest in the Board of Administration the powers necessary to administration of the provisions, define minimum health benefits to be provided by the plans, fix the State's monthly premium contribution per employee or annuitant at the lesser of the cost of coverage or \$5, and specify that the act shall become operative on July 1, 1961.

Spelled out in greater detail the proposed legislation would accomplish the following:

Place under the administration of the Board of Administration of the State Employees' Retirement System a program whereby the State, through contracts entered into between the board and carriers, or the approval of contracts entered into between carriers and employees'

* The coverage would be afforded to any person who has retired while an employee and who receives any retirement allowance under any state or University of California retirement system to which the State was a contributing party.

organizations, would participate in providing group medical and hospital care coverage for state employees and annuitants (Sees 22771, 22774 †)

Fix the State's monthly contribution toward payment of the insurance premium of each employee or annuitant at the lesser of the cost of the coverage or \$5, and require the employee or annuitant to pay the remainder of the premium amount through payroll deductions to be transmitted to the carrier (Sec 22825)

Require the State to contribute additional amounts needed for purposes of administration of the program and to provide an adequate contingency reserve (Sec 22826)

Specify that the contributions of each participating employee or annuitant be withheld from his monthly salary or retirement allowance, respectively; and require that the State's contribution for any employee be chargeable to the fund from which the employee's salary is payable, and the State's contributions for annuitants be provided through separate appropriations (Sec 22827).

Authorize participation in the program by the University of California upon the filing of a resolution of the Board of Regents approving of such participation for the university and its employees and annuitants (Sees 22753, 22754)

Define the health benefits plans for which the program will be open as a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangement provided by a carrier for the purpose of providing, arranging, paying for, or reimbursing basic hospital or medical care (Sec 22754)

Prescribe the minimum benefit coverage to be provided by plans in order to qualify, to require that they afford hospital benefits, surgical benefits, in-hospital benefits, out-patient benefits; and to authorize the inclusion of other benefits including those afforded by a bona fide church, sect, denomination or organization whose principles include healing by prayer or spiritual means (Sec 22790)

Define an employees' organization whose existing plans may be approved, as an association or other organization of state employees or annuitants in which membership is open to employees and annuitants of the State and which is not organized solely or principally for the purpose of obtaining prepaid hospital and medical care (Sec 22754)

Require approval of any plan in existence at the operative date of the act, if the plan meets the requirements and standards prescribed by and under the act, and if payroll deductions have previously been authorized to be made for insurance premium purposes under Section 1156 of the Government Code (Sec 22790)

Specify that the types of plans to be contracted for or approved shall include statewide service benefit plans, statewide indemnity plans, comprehensive group-practice prepayment plans, and individual practice prepayment plans (Sec. 22791)

† All section references are to provisions which would be added to the Government Code by the provisions of the bill

Make enrollment in any plan optional with any employee or annuitant, and permit an enrolled employee, upon becoming an annuitant, to continue the enrollment without changes in premium rates or benefit coverage (Sec 22810)

Permit enrollment in plans of specified family members of the employee or annuitant (Secs 22754, 22810, 22811, 22812)

Vest in the Board of Administration broad regulatory powers extending to matters involving the approval of plans, the disapproval of plans, details of coverage commencement, termination, and transfer, eligibility for enrollment, changes in coverage, elimination or control of the impact of adverse selection due to employees retired prior to the effective date of this act, and related matters (Secs 22772-22777, 22810, 22812, 22816)

Specify that the members of the Board of Administration shall receive no salary for performance of duties under the act, but shall be reimbursed for actual and necessary expenses incurred (Sec 22771)

Prohibit the life insurance member of the Board of Administration from participating in voting on the question of whether a contract should be entered into for or approval be granted to a plan, but authorize him to participate in all other functions of the board (Sec. 22774)

Require administrative hearings to be afforded interested parties prior to the disapproval of any approved plan and in cases of disputes involving individuals in respect to questions of coverage (Secs 22776, 22815)

Require the Board of Administration to make available to employees and annuitants eligible for enrollment in plans, information enabling them to make an informed choice as to enrollment in various plans, and require that each enrollee be provided a document containing a summary of the services, benefits, procedures, and related matters pertinent to the plan in which he is enrolled (Sec 22778)

Prescribe minimum contents of contracts entered into for a plan, to require inclusion of a detailed statement of benefits and related matters, and prohibit a contract from excluding persons because of race, sex, or at time of first enrollment, because of age or health status (Sec 22793)

Require rates charged under any plan to reasonably reflect the cost of the benefits provided, and prescribe conditions which will permit adjustment of rates (Sec 22794).

Specify that the provisions of the act are not to be construed as authorizing the State to undertake any program of self-insurance in connection with hospital and medical care plans for state employees (Sec 22752)

Require the State Controller to identify and transmit to carriers on a monthly basis the premium amounts payable by the State and those withheld from the monthly salaries or retirement allowances of employees and annuitants (Sec 22841)

Establish in the State Treasury the State Employees' Contingency Reserve Fund to which amounts determined by the Board of Administration to be necessary to provide for an adequate contingency reserve shall, from time to time be credited, specify that the board may invest the fund in accordance with the provisions of law governing investment

of the retirement fund; prescribe the uses to which the fund shall be put, fix the maximum amount to be contained in the fund at any time; and provide for related matters (Sec 22840).

Specify the types of organization which may qualify as carriers, define the family members who may be included in plans, fix basic conversion and extension of coverage standards, prescribe basic limitations on rate-change procedures, provide for exclusion from the act of short-term, intermittent, and similarly situated employees, prescribe procedures to be followed in connection with the suspension and reinstatement of employees and the situation where the employee is granted a leave of absence, and to provide for numerous other procedural matters (Secs 22751, 22793, 22794, 22810, 22814, 22816)

Specify that the purposes of the part are to promote economy and efficiency in the state service, to enable the State to attract and retain qualified employees, and to recognize and protect the State's investment in qualified employees (Sec 22751)

Specify that the act shall become operative on July 1, 1961

Very truly yours,

RALPH N KLEPS
Legislative Counsel
By ERNEST H KUNZI
Deputy Legislative Counsel

APPENDIX C

BOARD OF ADMINISTRATION
STATE EMPLOYEE'S RETIREMENT SYSTEM
SACRAMENTO 14, March 9, 1960

ASSEMBLY MAN CHARLES W MEYERS, *Chairman*
Assembly Interim Committee on Civil Service and State Personnel
State Capitol, Sacramento 14, California

DEAR ASSEMBLYMAN MEYERS:

You have requested the retirement system to develop cost estimates for the first year of operation of the proposed Medical and Hospital Care plan as developed by your committee. The retirement system does not have a background of experience in this field from which to develop accurate cost estimates and therefore must make some arbitrary assumptions in developing such estimates. The cost estimates are developed below under the headings of Benefit Costs and Administrative Costs.

Benefit Costs

In developing the estimated costs of the benefit it is assumed that there will be a six-months' qualifying period for eligibility. Under this assumption the retirement system's estimate of its membership of state and university employees and of the numbers of annuitants for the 1960-61 fiscal year becomes pertinent and has been utilized in developing potential eligibles. In addition, it has

been assumed that 85 percent of those eligible to participate in this plan will so participate. Following is the estimated eligibles and cost:

State and university employees.....	116,000
Annuitants	9,500
University of California Academic System.....	4,000
Miscellaneous (state college teachers belonging to the Teachers' System, legislators, legislative employees, judges, etc.)	5,000
Total	134,500
85 percent of 134,500 = 114,325	
State's cost at \$60 per year per participating employee = \$6,859,500	

It can be assumed that some 30 to 35 percent of the above figure will be borne by special fund agencies and that the remainder will be borne by the General Fund. You may wish to confirm this with the Department of Finance. Note that no estimate of the costs of creating a Contingency Reserve Fund has been included.

Administrative Costs

The system has estimated that the annual administrative costs would be approximately \$190,000.

In developing this estimate the system has considered adequate staffing and operating expenses, all subject to scrutiny by the Department of Finance and the State Personnel Board as appropriate.

The system presents these estimates as tentative costs knowing that the assumptions can be erroneous in either direction in that only experience will develop the basis for accurate estimates.

Very truly yours,

WILLIAM E. PAYNE, *Executive Officer*

APPENDIX D

JOINT LEGISLATIVE BUDGET COMMITTEE CALIFORNIA LEGISLATURE SACRAMENTO, CALIFORNIA, March 16, 1960

HONORABLE CHARLES W. MEYERS
*Assemblyman, 19th District
Room 3154, State Capitol
Sacramento, California*

DEAR ASSEMBLYMAN MEYERS: In accordance with your request, we are sending to you our observations regarding the probable state costs to implement the provisions of the proposed State Employees' Medical and Hospital Care Act. In preparing cost estimates, we have consulted with the staff of the State Employees' Retirement System, the agency that would be most concerned with the administration of the proposed plan.

The cost estimates presented here are the same as those prepared by the State Employees' Retirement System, plus estimates of administrative costs related to establishment of a contingency reserve fund.

and the functions to be performed in the State Controller's Office. We have reviewed the process and assumptions used by the State Employees' Retirement System in making its estimates and believe that they are reasonable and consistent with provisions of the draft legislation proposed by our committee.

Administrative Costs

State Employees' Retirement System.....	\$190,000
State Controller's Office	50,000
State Employees' Contingency Reserve Fund.....	10,000
Total administrative costs.....	\$250,000

State Contribution Costs

Estimate of number of employees eligible.....	134,500
Percent of eligibles expected to participate.....	85%
State contribution per employee per month.....	\$5
Total state contributions per year (134,500 x 85% x \$5 x 12 months)	\$6,859,500
Estimated total state costs	\$7,109,500

Although a determination of accurate cost estimates can only be obtained through detailed study of staffing needs and actual employee participation, we believe these tentative cost estimates provide a reasonably accurate cost projection.

Sincerely,

A. ALAN POST
Legislative Analyst

APPENDIX E

OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, October 10, 1960

HONORABLE CHARLES W. MEYERS
579 Wildwood Way
San Francisco, California

Social Security and State Personnel—No. 4788

DEAR MR. MEYERS: You have asked that we review the federal legislation cited as the "Social Security Amendments of 1960" (P.L. 778, 86th Congress) and analyze the items therein directly bearing upon the employment of personnel by the State.

The Social Security Amendments of 1960 represent an extensive series of revisions of many phases of the federal social security laws. The legislation affects matters ranging from unemployment compensation, to the various federal-state public assistance programs and the Old Age, Survivors, and Disability Insurance Programs.

Insofar as the relationships between the state government and its employees are concerned, by far the most important of the provisions of the Social Security Amendments of 1960 are those dealing with the subject of co-ordination of state and local retirement systems with the Old Age, Survivors, and Disability Insurance Program. Authorization to effect such co-ordination with retroactive coverage has been granted by the amendments. Closely following the retirement system

co-ordination amendments in overall importance, are various changes made in the eligibility and benefit provisions of the Old Age, Survivors, and Disability Insurance Program, since the provisions of that legislation will be applicable to individuals in any retirement system which is so co-ordinated.

We shall first review the terms and conditions which the amendments prescribe in the matter of co-ordination of state and local retirement systems, and then outline the important changes made in the eligibility and benefit provisions of the Old Age, Survivors, and Disability Insurance Program itself *

The pertinent federal law and the 1960 amendments contain provisions whose applicability is limited to particular states or territories. This analysis will be confined to the provisions applicable to the situation in California.

I. O.A.S.D.I. Coverage for State and Local Governmental Employees

A. Preliminary Review of Existing Law

Section 218 of the Social Security Act (see U.S.C.A., Title 42, Sec. 418) authorizes voluntary agreements to be entered into between the individual states and the federal government (specifically, the Secretary of Health, Education and Welfare) pursuant to which O.A.S.D.I. coverage may be extended to state and local governmental employees who are otherwise excepted from such coverage.

Coverage of state and local governmental employees who are *not* members of a retirement system has been authorized under the agreement procedure since 1950. Various amendments since that time have made further extension of coverage possible. Certain services *cannot* be covered by agreement, including employees engaged in unemployment work relief projects, patients or inmates working in hospitals or institutions, certain transportation workers (for whom other special provision is made), and certain others. Coverage of certain other positions or services is made optional with the states, including emergency services, services in elective positions, services in part-time positions, services in positions paid for on a fee basis, services performed by students in schools they are attending, and services performed by agricultural workers receiving annual wages of less than \$150 from one employer or performing services for less than 20 days in a year. Coverage of firemen and policemen by agreement is authorized, but it is required that they be treated as a separate coverage group.

Section 218 provides for two procedures by which O.A.S.D.I. coverage may be extended to state and local governmental employees.

The first procedure involves a referendum pursuant to which an election may be held among the members of a retirement system on the question of whether the positions covered by the system should have social security coverage. If a majority of the members of the system eligible to vote in the referendum vote in favor of O.A.S.D.I. coverage, the coverage of the system is effected with the entire system treated as a single group. The State is authorized to designate, prior to holding of the referendum, certain classes of positions and particular positions covered by the system which are to be excluded from coverage.

* For purposes of the analysis we shall utilize H.R. No. 12580 of the 86th Congress (2d Sess.) as printed and published by order of the Senate of the United States on August 23, 1960.

Where the retirement system covers employees of two or more institutions of higher learning, each may (if the State desires) be treated as a separate retirement system for these purposes. The procedures for conducting the referendum and various other matters are provided for in detail.

The second procedure permits the State to divide a state or local retirement system into parts for purposes of O A S D I. coverage, one part to consist of the positions of members who desire coverage, and the other to consist of members who do not desire coverage. As to the part of the system comprised of members desiring coverage, the coverage is effected under the regular referendum procedure. Under this method of obtaining coverage, all persons who become members of the original retirement system, following the date coverage is extended to the part comprised of persons desiring it, must become subject to coverage—that is, newly employed persons who become members of the retirement system as a whole, must join the part to which coverage is extended after the division of the system for O A S D I. purposes. The federal law, again, authorizes institutions of higher education (if the State desires) to be covered by a single retirement system to be treated as separate whole retirement systems for the instant purpose. The pertinent federal law spells out a good deal of detail in respect to this “division” procedure, and contains provisions relating to extension of coverage and the transfer of employees among the split systems, and the like. It should be noted that no membership referendum is required on the basic question of whether a retirement system is to be divided—the federal law leaving that decision to “the State.” At the time of the 1959 Regular Session of the Legislature, the federal law authorized the agreement entered into under this procedure to afford retroactive coverage of the members of the “desirous” division of a retirement system for a period to extend back to December 31, 1955, *provided the agreement was made prior to 1960*.

It is the latter “division” procedure to which was directed the most recent California legislation in the matter of co-ordination of retirement systems with O A S D I (Stats. 1959, Chs. 777, 2067, 2068, 2069). This legislation authorized the division of the state and local retirement systems for purposes of Section 218 of the Social Security Act. In respect to the State Employees’ Retirement System, the Legislature made the basic question of whether the system should be divided, one to be determined by referendum among the members (Gov. C., Sec. 22152.5). This referendum requirement on the basic question of division was not imposed by the Legislature in the case of local school district employees, the local authorities being merely authorized and directed to proceed with the division (Gov. C., Secs. 22153, 22154). The referendum held among members of the State Employees’ Retirement System in the fall of 1959 resulted in the defeat of the basic proposal of division of the system, and, consequently, no agreement for extension of O A S D I. coverage to those members could be consummated before the “prior to 1960” deadline date imposed by Section 218 for purposes of retroactive coverage.

B. The 1960 Social Security Amendments Pertaining to *Co-ordination of Retirement Systems with O A S D I*

The 1960 amendments authorize agreements to be entered into between states and the Secretary of Health, Education and Welfare for extension of O A S D I coverage to state and local governmental employees under the "division of retirement system" procedure outlined above with retroactive coverage available. The amendments eliminate the existing time deadlines within which agreements must be entered into for retroactive coverage purposes, and do *not* impose any new time deadlines—such as the "prior to 1960" limitation which appeared in the earlier provisions. Retroactive coverage is authorized to a date not "earlier than the last day of the sixth calendar year preceding the year in which the agreement or modification, as the case may be, is agreed to by the Secretary and the State." This amounts to a maximum of five years of retroactive coverage.

In addition, provisions are added to Section 218, in connection with the procedure for blanketing in an entire retirement system by referendum (the first procedure outlined above), to be applicable to retirement systems which cover both state employees and employees of individual political subdivisions, or employees of two or more political subdivisions, to permit the particular segments of employees to be treated as separate retirement systems for retroactive coverage date purposes. Thus, where that procedure for achieving co-ordination is utilized, the State may provide different retroactive coverage dates for the employee segments of a retirement system.

The 1960 amendments of Section 218 also provide that the certifications concerning the conduct of referendums, previously required to be executed by the Governor of the State, may be executed by an official designated by the Governor.

The amendments permit municipal and county hospitals to be treated as separate retirement system groups.

The extension of coverage to certain California hospital employees is authorized by the amendments. They are described in the amendments as "any individual who, on or after January 1, 1957, and on or before December 31, 1959, was employed by such State (or any political subdivision thereof) in any hospital employee's position which, on September 1, 1954, was covered by a retirement system, but which, prior to 1960, was removed from coverage by such retirement system." The coverage of these employees may be effected by modification, prior to 1962, of an agreement which has been entered into with the State of California, provided specified conditions have been met including the conduct of a referendum among them and the payment by the State of prescribed tax contributions.

The amendments also authorize employees who are transferred from a noncovered system to a covered system to continue to be excluded from coverage under certain limited conditions.

Finally, the amendments add extensive new provisions dealing with the assessment and collection of tax contributions from the states, and related matters. Since these matters involve technical procedures to be followed by state and federal authorities after an agreement has been entered into, rather than matters of benefits and coverage, we shall not undertake to analyze them in detail. Generally speaking, they limit the

financial liability of the State for contributions in the case of individuals who work for more than one state coverage group, place a statute of limitations on investigations of correctness of determinations of state and local coverage, and provide for administrative and judicial review of federal determinations affecting a state's liability for contributions.

II. Changes in O.A.S.D.I. Eligibility-Benefit Provisions Effected by Social Security Amendments of 1960

We shall not here undertake to summarize all of the eligibility and benefit provisions of the Old Age, Survivors and Disability Insurance provisions of Titles II (Secs. 201 et seq.), and III (Secs. 301 et seq.) of the Social Security Act,* but shall confine the analysis to changes effected by the 1960 amendments and compare the new law with the old in these limited respects

A. The Retirement Test

The so-called "retirement test" provisions are revised so that a beneficiary under 72 years of age who is in receipt of outside earnings in the form of wages and self-employment income will not incur reductions in his benefit amounts to the extent prevailing under the former law. Before enactment of the 1960 amendments one month's benefit was deducted for each "\$80 of earnings, or fraction thereof, in excess of \$1,200 a year. Under the 1960 amendments, if the individual has outside earnings exceeding \$1,200, the reduction in his benefit amount is only one-half of the amount in excess of \$1,200 for the first \$300 of excess, and a dollar for dollar reduction for excess earnings beyond the \$300 amount.

Thus, if an individual earns \$1,500 in outside income during the year, his benefit amount is reduced by \$150 (one half of \$300 in excess of \$1,200). Then, for outside earnings beyond \$1,500, there is a dollar-for-dollar reduction in his benefit. Thus, from the beneficiary's point of view, is clearly more liberal than reduction of one month's benefits for each \$80 of earnings in excess of \$1,200. These amendments are effective for years after 1960 (See Sec. 203(e) of the Act—U S C A, Title 42, Sec. 403(e).)

B. The Insured Status Work Requirement

Before enactment of the 1960 amendments, to be "fully insured" an individual was required to have one quarter of coverage (no matter when required) under O A S D I for each *two* calendar quarters elapsing after the year 1950, or elapsing after the calendar quarter in which the individual attained age 21 (if that occurred after 1950), and up to the beginning of the calendar quarter in which he attained retirement age or died. Under the 1960 amendments this requirement is reduced to one quarter of such coverage for each *three* quarters of such elapsed time.

Before the 1960 amendments persons who died before September, 1950, could not be fully insured unless at least one-half of the quarters elapsing after 1936 were quarters of coverage, except that persons who died after 1939 and before September, 1950, could meet the "fully insured" requirement with at least six quarters of coverage. The 1960

* See U S C A, Title 42, Secs. 401 et seq.

amendments require merely six quarters of coverage for these purposes, retain the provisions specifying that 40 quarters of coverage makes the individual "fully insured" for life, add special language specifying that a quarter during which an individual was disabled shall not be counted as an elapsed quarter for these purposes unless it was a quarter of coverage, and make other technical changes. The amendments are made effective for months after September, 1960. (See Sec 214(a) of the Act—U S C A , Title 42, Sec 41(a))

C. Children's Benefits

Benefits payable to children of deceased workers, which, prior to the 1960 amendments, amounted generally to somewhat less than 75 percent of the worker's benefit (depending upon the number of children), are set by the amendments at 75 percent of the worker's benefit for all children, subject to the maximum limitation on family benefits. (See Sec 202 of act—U S C A , Title 42, Sec 402.)

D. Survivors' Benefits

Benefits are granted to the survivors of an individual who died prior to 1940, provided the individual had acquired six quarters of coverage prior to death (See Sec 202 of act—U S C A , Title 42, Sec 202.)

E. Invalid Marriages

Benefits are provided for a person as the wife, husband, widow or widower of an individual, despite a marriage which was invalid because of a technical legal impediment, if the parties went through a marriage ceremony in good faith, and the applicant and the insured were living in the same household at the time of death of the insured. Benefits are also provided for children or stepchildren of a couple whose marriage was so invalid (See Sec 216 of the act—U S C A , Title 42, Sec 416.)

F. Term of Marriage

The period of time required for a marriage to have existed for purposes of qualifying an individual to receive benefits as a wife, husband, child, or stepchild of a retired or disabled person is reduced from three years to one year (See Sec 216 of act—U S C A , Title 42, Sec 416.)

G. Parent-Child Relationship After Establishment of Eligibility

The payment of the child's benefit is permitted in the case of a child who is born or becomes the insured's stepchild after the insured becomes disabled, or who is adopted within two years after the insured becomes entitled to disability benefits. In the case of adoption, certain prescribed steps must have been taken prior to the time when the insured became entitled to disability insurance benefits. Prior to the 1960 amendments benefit eligibility of the child could not be established in these circumstances (See Sec 202 of act—U S C A , Title 42, Sec 402)

H. Dependent Child

The payment of a child's benefit based upon the wage credits of the child's father is authorized, even though the child is living with and being supported by a stepfather. The 1960 amendments eliminate language specifying that a child who was living with and receiving more than one-half of his support from a stepfather is not to be deemed a

dependent of the father (See Sec 202 of act—U S C A , Title 42, Sec. 402)

I *Disability Insurance Age Limit*

The 1960 amendments remove from the law the provisions which limited the payment of disability benefits to persons who have attained the age of 50. The result is to afford disability benefit coverage to persons under the age of 50, and their dependents, on the same basis as such benefits were provided for disabled workers who were from 50 to 65 years of age and their dependents (See Sec 223 of act—U S C A , Title 42, Sec 423)

J. *Disability Trial Work Period*

A disability insurance beneficiary or a childhood disability insurance beneficiary would be allowed a trial work period for the duration of which his disability benefits and the freeze of his coverage quarters for the period of disability would not terminate because of performance of such work. The trial work period would begin with the month in which he becomes entitled to disability insurance benefits, or, in the case of the childhood beneficiary, the month in which he becomes entitled to disability insurance benefits or attains the age of 18, if the latter is a later occurring event. The trial work period ends on the ninth month beginning on or after the first day of the period, or upon the sooner termination of the disability. The nine months need not be consecutive months. For the worker who recovers from the disability, benefits would continue to be paid him for the following three months, except if he should die or reach the retirement age sooner, in which case other benefit provisions would become applicable (See Secs 222, 223 of act—U S C A , Title 42, Secs. 422, 423)

K *Disability Insurance Waiting Period*

The six-month waiting period requirement for disability benefit purposes is eliminated with respect to an individual who becomes disabled within 60 quarters following the termination of a prior disability. (See Secs 216, 223 of act—U S C A , Title 42, Secs 416, 423)

L. *Alternate Insured Status Requirement for Disability Insurance Purposes*

Alternate insured status requirements have been put into the law by the 1960 amendments. To be eligible for disability insurance benefits in any month an applicant must have quarters of coverage sufficient to have made him fully insured if he had attained retirement age and filed application for old age benefits on the first day of the month, and he must have at least 20 quarters of coverage in the 40-quarter period ending with the quarter in which this day occurred (quarters included in a period of disability for purposes of the "disability freeze" and which were not otherwise quarters of coverage are not counted as part of the 40-quarter period)

The 1960 amendments provide an alternate requirement for those who cannot meet these insured status requirements. The individual will be deemed to have met the requirements if he has not less than a total of 20 quarters of coverage and if all quarters elapsing after 1950 (there must always be at least six such quarters) and up to that quarter were

quarters of coverage. (See Secs 216, 223 of act—U.S.C.A., Title 42, Secs. 416, 423)

III. Conclusion

The above analysis constitutes an outline of the main points of The Social Security Amendments of 1960 which are of interest in the matter of the employment of personnel by the State. It should be noted that each of the provisions noted is generally connected with a considerable number of related substantive and technical amendments which we have not undertaken to analyze. There are also a number of independent amendments of a technical nature which we have not discussed. These relate principally to matters of coverage periods and to the financial operations of the O.A.S.D.I. program. Insofar as present state employees are concerned, the most important coverage provisions of the 1960 amendments are those dealing with retroactive coverage for state and local public employees in connection with coordination of retirement systems, all of which have been analyzed above. As to the amendments dealing with financial operations, we shall note only that they do not increase any social security taxes or the social security wage base.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By ERNEST H. KUNZI
Deputy Legislative Counsel

APPENDIX F

POLICY AND INVESTMENT RECOMMENDATIONS FOR THE FUNDS OF THE CALIFORNIA STATE EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Prepared by

MOODY'S INVESTORS SERVICE
in association with

PAUL L. HOWELL

September 15, 1960

Growth and Description of California SERS Pension Fund

The State Employees' Retirement System (SERS) of California was inaugurated during the depth of the depression—in 1932—to enable the State's civil servants to live in dignity after retirement. SERS now covers more than 225,000 employees and distributes benefits to 17,000 retired or disabled members.

From the joint contributions of the active members and the State and from interest earnings, a fund of \$1.2 billion (after the payment of benefits) has been accumulated during the past 29 years. The fund is currently increasing at a rate of \$160 million annually. With the

growing population of the Golden State, it is estimated that the fund will reach \$3 billion by 1970.

On June 30, 1960, SERS funds were invested, as follows:

	Amount (millions)	Percentage
Governmental securities		
U S Government Bonds -----	\$301	25%
Municipals (domestic) -----	110	9
Canadian bonds -----	62	5
Corporate securities		
Public utility bonds -----	494	41
R R equipment trust certificates -----	97	8
Industrial bonds -----	136	12
Total -----	\$1,200	100%

For the fiscal year ending June 30, 1960, the fund earned 3 72 percent on total net accumulated contributions (before deducting administrative expenses of 07 percent).

Suitable Investment of Public Pension Funds

Moneys collected from joint contributions and destined for retirement purposes have objectives entirely different from other accumulations of public treasury funds. Consequently, management of such pension funds should be carefully directed toward their special requirements. In essence, state pension funds:

1. Are long-term in nature,
2. Are growing rapidly,
3. Do not require liquidity,
4. Are not subject to catastrophic hazards, and,
5. Are tax-exempt.

This complex of protective factors give state pension systems a unique opportunity of maximizing benefits by taking advantage of the great variety of productive investments available in the American economy. Income is most important but capital appreciation can also be stressed.

Corporate bonds, common stocks and real estate mortgage loans represent securities meeting the objectives of pension fund investment. Since the turn of the century, holders of common stocks have received increasing dividends as the nation's economy has expanded. A forceful example of the importance of this trend is presented by the action of Moody's 125 industrial stock average during the past 20 years. An investment made in 1940 yielded just over 5 percent on a dividend of \$1.67. By the end of 1959 dividends had increased to \$5.81 to provide a return of more than 18 percent on the 1940 cost of \$31.76. This growth is of enormous importance in long-term pension funds where an increase of 1 percent (from 2.5 percent to 3.5 percent) in the earnings rate would enable benefits to be increased about 25 percent.

In addition, common stocks have a long history of appreciation of their market value while fixed income securities have failed to meet the challenge of declining purchasing power. The Cowles Commission study, extended to date, shows that during the past 80 years a comprehensive group of common stocks have averaged a rise in value of

about 3 percent a year or almost 1,000 percent. Similarly, an investment made in Moody's 125 industrial stock average at \$31.76 in 1940 had appreciated by 1959 to \$186.26, a gain of 480 percent. This record of stocks as a hedge against postretirement increases in the cost of living strongly suggests their inclusion in a well-balanced pension portfolio.

Because common stocks have been misused by some individuals who failed to heed elementary rules of sound fiscal management by speculating on thin margins and failing to investigate, should not condemn their purchase by pension funds. With a proper staff (direct or indirect) the managers of state pension funds can make selections from the whole gamut of American industry. They can watch the constantly changing conditions and take advantage of them through prompt investing and reinvesting. A well-selected portfolio managed in this fashion should provide protection against inflation and render handsome returns to the long-term fund with little need for liquidity. Common stocks are already found in the pension portfolios of many private corporations and some public bodies.

Similarly, secured real estate loans should be acquired since they provide both safety of principal and returns superior to those of bonds. Certain classes of mortgage loans have the added protection of federal government backing. Real estate loans made in California would be even more profitable since mortgage money is in short supply because of the explosive population growth and heavy construction. Interest rates on home loans in California are the highest in the nation.

Major Investment Policy Recommendations

Hedged by constitutional and legislative restrictions, the prudent managers of the SERS funds have developed a conservative portfolio which it is recommended should be adjusted, without negating prudence, to provide a better net investment result on a long-term basis.

Assuming the appropriate legal adjustments, the report recommends changes to effect the following:

1. The gradual accumulation of common stock equities to aggregate, ultimately, 25 percent of SERS's total assets;
2. The development of a real estate mortgage inventory, ranging from 20 percent to 25 percent of total funds; and,
3. The gradual replacement of government bonds now held by corporate bonds.

The acquisition of common stocks and mortgages should ultimately result in achieving a higher net productivity of the fund, and, at the same time retain fundamental long-term soundness.

The report presents various standards and recommendations necessary for the maintenance of the high-grade position of SERS.

Meeting Postretirement Increases in the Cost of Living

Standards of living based on pensions related to salary at the time of retirement have been severely impaired by subsequent rises in the cost of living. The best protection is a dynamic investment policy to make the assets as productive as possible. To that end a conservative

program of common stock purchases has been recommended. But fixed-payment guarantees must, by their very nature, be so conservative that the benefits of a more vigorous investment program are lost.

Many of the present members may feel that this is insufficient protection against inflation. Consequently, it is recommended that an optional variable annuity program be instituted to permit additional investment in common stock. At the option of the voluntarily participating member 50 percent, 75 percent or even 100 percent of his own current contribution could be channeled into a variable annuity accumulation account.

Upon retirement, these participants would receive a monthly income varying with the value of the underlying diversified common stock portfolio, as well as with the other factors now controlling pensions. This program should accumulate a larger sum by time of retirement and provide an average return larger than fixed income accumulations.

The variable annuity program of the College Retirement Equities Fund (CREF), sponsored by Teachers Insurance & Annuity Association (TIAA), has been very successful and now has 61,000 voluntary participants. Wisconsin State Employees' Retirement System, the Tennessee Valley Authority and a number of industrial corporations have followed CREF's pioneer program.

This is a synopsis of a detailed report on the investment policies of California SERS prepared by Moody's Investors Service in association with Paul L. Howell, a financial and pension consultant, dated, September 15, 1960.

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ASSEMBLY INTERIM COMMITTEE REPORTS

1959-1961

VOLUME 3

NUMBER 8

FINAL REPORT

of the

ASSEMBLY INTERIM COMMITTEE ON
TRANSPORTATION AND COMMERCE

(House Resolution 326.22, 1959)

MEMBERS OF THE COMMITTEE

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Published by the

ASSEMBLY
OF THE STATE OF CALIFORNIA

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Speaker

HON. WILLIAM A. MUNNELL
Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore

HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk

January 2, 1961

DEDICATION TO
SETH JOHNSON

On July 16, 1959, California lost a most dedicated public servant who will live on in our minds and in our hearts and in the hearts of all those he helped and whose burdens are a little lighter because of him.

This is the true measure of success Measured by that yardstick, Seth was a most successful man.

The Legislature and this committee are lonelier places without him We who knew him and worked with him will always remember his earnest devotion to the task at hand and the problems to be solved

Above all, we will cherish forever his devotion to his fellow man.

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON
TRANSPORTATION AND COMMERCE
January 2, 1961

HON. RALPH M. BROWN
Speaker of the Assembly; and
HON. MEMBERS OF THE ASSEMBLY
State Capitol, Sacramento, California

GENTLEMEN: In accordance with the provisions of House Resolution No 326 of the 1959 General Session, your committee has investigated various aspects of transportation and commerce in California and herewith submits the final report of its activities during the interim following the close of the 1959 Session.

Contained herein are narratives of the committee's hearings, reviews of testimony received at those hearings and committee findings and recommendations.

Respectfully submitted,

L. M. (LEE) BACKSTRAND, *Chairman*
EDWARD M. GAFFNEY, *Vice Chairman*

TOM BANE	FRANK LUCKEL
FRANK P. BELOTTI	PAUL J. LUNARDI
CHARLES E. CHAPEL	CHARLES W. MEYERS
WALTER I. DAHL	NICHOLAS PETRIS
CLAYTON A. DILLS	W. BYRON RUMFORD
MYRON H. FREW	CHET E. WOLFRUM
JOSEPH M. KENNICK	

HOUSE RESOLUTION No. 326

Relative to constituting certain standing committees of the Assembly
as interim committees

Resolved by the Assembly of the State of California, As follows:

1. The following standing committees of the Assembly are hereby constituted Assembly interim committees and are authorized and directed to ascertain, study and analyze all facts relating to (1) the subjects and matters assigned to them by this resolution; (2) any subjects or matters referred to them by the Assembly; (3) any subjects or matters related to (1) or (2) which the Committee on Rules shall assign to them upon request of the Assembly or upon its own initiative:

(v) The Committee on Transportation and Commerce is assigned the subject matter of the Vehicle Code, the Streets and Highways Code, uncodified laws relating thereto, and other matters relating to transportation and commerce.

2 Each of the above committees shall consist of the members of the Assembly Standing Committee on the same subject for the 1959 Regular Session. The chairman and vice chairman shall be the chairman and vice chairman of the standing committee. Vacancies occurring in the membership of the committee shall be filled by the appointing power.

3 Each committee is authorized to act during this session of the Legislature, including any recess, and after final adjournment until the commencement of the 1961 Regular Session, with authority to file its final report not later than the fifth calendar day of that session. All reports shall be printed out of the funds allocated to said committee and shall be in the form prescribed by the Rules of the Assembly and the Committee on Rules.

4. Each committee and its members shall have and exercise all the rights, duties and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly and of the Standing Rules of the Assembly as they are adopted and amended from time to time at this session, which provisions are incorporated herein and made applicable to this committee and its members.

5 Each committee has the following additional powers and duties:

(a) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies and reports to the committee as will best assist it to carry out the purposes for which it is created.

(b) To cooperate with and secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this resolution and to direct the sheriff of any county to serve subpoenas, orders and other process issued by the committee.

(c) To report its findings and recommendations to the Legislature and to the people from time to time and at any time, not later than herein provided.

(d) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution

6 No subcommittee chairman shall be appointed by the chairman of any interim committee or otherwise except upon prior written consent of the Committee on Rules or the Speaker.

7 No consultants, staff members, or other employees may be employed by any interim committee except upon prior written approval of the Committee on Rules.

8 No contracts for goods or services or otherwise may be negotiated or entered into by any interim committee without the prior written approval of the Committee on Rules.

9 No committee or any member or employee thereof may travel outside the State on committee business without the prior written consent of the Committee on Rules or the Speaker in each case.

10. Within 30 days after the adoption of this resolution, each interim committee shall file with the Rules Committee a proposed work schedule program report setting forth the specific matters it is contemplated the committee shall study and report upon, which program may be supplemented from time to time, and which report shall also contain the personnel or staff needed for said committee and the estimated expenses of said committee for the period June 19, 1959 to March 19, 1960

11 In order to prevent duplication and overlapping of interim studies between the various interim committees herein created, no committee shall commence the study of any subject or matter not specifically authorized herein or assigned to it unless and until prior written approval thereof has been obtained from the Committee on Rules or the Speaker

12 Each interim committee shall file with the Assembly a brief general preliminary or progress report of its activities on or before the twentieth calendar day of the 1960 Budget Session of the Legislature

13 Each interim committee shall file its final report with the Assembly on or before the fifth calendar day of the 1961 Regular Session of the Legislature

14 The sum of four hundred fifty thousand dollars (\$450,000) or so much thereof as may be necessary is hereby made available from the Contingent Fund of the Assembly for the expenses of the above committees and their members and for any charges, expenses or claims they may incur under this resolution. The Committee on Rules shall allocate from the above sum to each committee created by this resolution such amount as the Committee on Rules from time to time deems appropriate and sufficient to carry out the duties assigned to each such committee. After allocations have been made by the Committee on Rules to a committee pursuant to this resolution, the Committee on Rules shall not thereafter reduce or revert any funds or portions thereof so allocated. The original amount so allocated shall be for expenses for the period June 20, 1959, to March 20, 1960. Funds not to exceed the amount so allocated shall be paid from the said Contingent Fund and disbursed, after certification by the Chairman of the respective committees, upon warrants drawn by the State Controller upon the State Treasurer.

PREFACE

During the 1959-1961 interim, the committee undertook a program of investigation designed to provide a sound basis for legislative proposals for the continued improvement of various aspects of California's motor vehicle problems.

Toward these ends, the committee held 15 days of hearings on subject matters covered in this report and met jointly with the Senate Transportation and Public Utilities Committee on two occasions. Additionally, seven days of hearings were devoted to the subject matter of House Resolution 381, covered in another report issued as a separate document.

In the course of its hearings, the committee received an abundance of useful testimony and many helpful suggestions on a wide range of subjects. What follows in the text of this report are excerpts of testimony presented at those hearings and the committee findings and recommendations based on that testimony.

No subcommittees were appointed during the interim but the committee was ably assisted by three advisory committees consisting of citizens prominent in vehicular traffic work, whose reports and recommendations appear as Part II, A, B and C of this report.

The committee wishes to express its sincere appreciation to William F. Scheuermann, Jr., for an excellent job of compiling and writing this report in the very short time available.

BACKGROUND INFORMATION CONCERNING THE NEED FOR A FACTUAL STUDY OF OWNERSHIP, OPERATION AND USE OF MOTOR VEHICLES

Note: The full report on the study authorized by House Resolution 381 (Backstrand—1959) appears as Vol 3, No. 7, of the 1959-61 report series. We are, however, including here a brief statement on the purpose and need for the study.

At the close of World War II our highway plant was in a desperate situation. Construction bogged down during the war, and our roads were completely inadequate to cope with more cars, more consumer goods to be moved, and a public which was demanding more capacity, and still more capacity, to accommodate the ever-increasing traffic volumes.

It was then that California turned to long-range and statewide factual surveys of physical needs on which to base programs of improvement. Physical needs were measured, a system of "deficiencies" was set up, and priorities were established according to the urgency of need; and the problem of providing the means to accomplish what had to be done was resolved by legislative action. There was great consternation among the general public when increased gasoline taxes were first proposed to provide the wherewithal for this major highway construction program, but there has been little or no objection since. Our citizens have discovered the joys and the benefits of their statewide highway network—as a matter of fact, in 1959 the Legislature approved a 10.5 billion dollar program of construction to provide for projected needs up to 1980, one of the most mammoth public works programs ever passed.

But the responsibility of state government obviously does not end with the construction of a new road. It must be operated efficiently and safely.

Inefficiency is very expensive

When we better understand the relationship of attitude to driving, we will save accidents, lives and dollars. But there still remain all the innumerable functions of the departments and divisions of state government which pertain to the use, ownership and operation of motor vehicles on our streets and highways. These are major functions of state government.

But how well have we been doing? The purpose of House Resolution 381, introduced by Chairman Backstrand during the 1959 Session, was to find out. A long-range, orderly program for remedial legislation to take care of the problems of motor vehicle ownership and use has never been undertaken in the State of California. Proof of the need for such a study was brought to Mr. Backstrand's attention during the past four years while serving as a member of the President's Committee on Traffic Safety.

This interim committee was directed to make the study so that the Legislature could, upon possession of facts, exercise its full responsibility in providing funds and authority to responsible officials so that use of streets now built or being built will adequately serve the needs of the people efficiently and safely, both for the present and in the future. This study has been under way since the close of the 1959 Session.

Three departments of state government with responsibilities in motor vehicle use and ownership were requested to review the subject matter of House Resolution 381 and to suggest the scope of studies which could be expected to produce beneficial results. These were the California Highway Patrol, the Department of Motor Vehicles, and the Division of Highways.

A thorough, critical examination of each of these functions of state government is obviously a huge and complex task. To insure orderly procedures, the committee developed a three-stage study program as follows:

In the first stage, an inventory was needed of all of the functions of the three departments most closely connected with these matters. This step involved the assemblage of all available information concerning the history and present status of every important activity in each of the functions being studied. This has produced a detailed inventory of every factor bearing on each subject, including the legal authority on which it is based, the size of the job, and factual data on administrative policies and methods.

The second stage, to begin after all pertinent facts have been gathered, consists of a detailed analysis of each activity. Is the function being performed adequately? Is the legal authority clear and sufficient? What steps can be taken to clarify the function? What are foreseeable future demands, and how can they be met in an orderly, efficient manner?

The third stage and ultimate goal of the study will be the formulation of a long-range program based upon analysis of facts, in order to develop a factual blueprint of immediate and long-term requirements as a basic guide for sound legislative and administrative action.

The resolution directed the Chairman of the Transportation and Commerce Committee to appoint an advisory council. This council has been appointed and includes representatives of city and county government, automobile clubs, women's organizations, organized labor, safety organizations, oil companies, State Chamber of Commerce, and enforcement organizations. The committee would like to express its appreciation to those people who have so readily agreed to give their time to assist the committee and the departments in this important study.

The committee has received the full cooperation of the Department of Motor Vehicles, the California Highway Patrol, and the Division of Highways. After many man hours of research and internal study, each submitted an outline of those functions in its administrative area which pertained to the operational aspect of highway transportation. The facts gathered will have many potentials of use, not only for the purposes of this study, but for public relations and information.

The HR 381 study is a complex problem, and in many respects a lot more so than the delineation of highway deficiencies and projecting them—there we are dealing with engineering factors

In this study we are pioneering the field of the driver—the owner and operator of vehicles on the road.

The first stage of this study—the fact-gathering—has been completed. *Attention should be called to this committee's recommendation, included in Vol 3, No 7 of the current report series, that the factual study of ownership, operation and use of motor vehicles be continued in accordance with the plan that has been developed and initiated.*

PART I

SUBJECTS OF INVESTIGATIONS AND FINDINGS

A. VARIOUS FISCAL ASPECTS OF TRANSPORTATION AND COMMERCE IN CALIFORNIA

(1) Exemption From Registration of Special Types of Vehicles

The law, the perennial problem and the future

The general problem of exemption of special types of vehicles from registration has confronted California farmers, industry, the Department of Motor Vehicles and the Legislature for many years. It is a perennial problem. And practically every session of the Legislature in recent years has been asked to add one or more items to the exempt list, especially as it pertains to implements of husbandry.

The law as currently embodied in the California Vehicle Code is found in Sections 345, 350 and 4007. Section 345 in part defines an implement of husbandry as a "vehicle which is used exclusively in the conduct of agricultural operations" and "does not include a vehicle which is designed primarily for the transportation of persons or property on a highway unless specifically designated as such by some other provisions" of the code.

Section 4007 provides that "implements of husbandry which are only incidentally operated or moved over a highway and implements of husbandry listed in Section 350 are exempt from registration." Section 350 lists specific types of equipment, but states that "implements of husbandry includes, but is not limited to" the 14 examples therein enumerated.

The original intent of exempting implements of husbandry from registration was limited to agricultural equipment that tilled the soil; but through the years, that concept has been expanded to include equipment transporting goods and property over the highway from field to plant. There has been no end to applications for exemption, and each succeeding Legislature has granted exemptions in piecemeal fashion.

The result has been a lack of consistent and definite legislation. Additionally, the distinction between implements of husbandry and vehicles subject to registration has not clearly been defined in all areas.

The philosophy of vehicle registration, as expressed by the Department of Motor Vehicles, is based upon two factors. The first is to provide the owner with protection, and includes the anti-theft features of the law as it relates to vehicles. The second is to secure the privilege of using the highway. And while original legislative intent in the registration field held that the fee should be commensurate with the cost of administration, the development of that legislative intent has brought in and established the idea of using registration fees to augment highway user tax money.

The philosophy of exemption is more elusive and less easy to classify, especially in its later developments and refinements. In addition to the general area of implements of husbandry, there currently exist exemptions in several fields including special highway construction equipment, cemetery vehicles, fork lifts, and such special non self-propelled, non load-carrying mobile equipment as oilwell drilling rigs.

It is perfectly apparent to the committee members that with future advancements in agricultural science and farm operations, as well as improvements in industrial management and operations throughout the State, more and more vehicles will be coming before the Legislature for exemption from or a reduction in registration fees. Peculiarities reflected in current agricultural exemptions certainly must exist in other industries, and the Legislature can logically and naturally expect those industries to apply for exemptions on newly-developed equipment that seems to qualify under current exempt categories.

Committee hearings

During the 1959-1961 interim study period, the committee was assigned the subject matters of Senate Concurrent Resolution 60 (Beard—1959 Session) and Assembly Bill 52 (Sam Geddes—1960 1st Ex Session).

The committee devoted the entire morning session of its July 26, 1960, meeting in San Diego to the subject matter of S.C.R. 60, and the entire morning session of its August 8, 1960, meeting in Sacramento to the subject matter of A.B. 52.

While testimony received at the San Diego hearing was specifically concerned with the possible exemption from registration of vegetable utility trailers, and discussion during the Sacramento hearing specifically considered the possible exemption of gondola-type grape tractors, the entire subject matter of exemption of special types of vehicles from registration was discussed at both meetings and will be included in this section of the committee's report.

Vegetable utility trailers

These four-wheel trailers, consisting of frames with two or four runners on a transverse axis, are pulled by tractors up and down the vegetable rows in the fields. Caster-mounted baskets roll on the runners and are filled with produce in the field. The trailers, generally carrying four baskets, probably do not weigh over 5,000 pounds when laden and are taken from the field to processing plants or packing sheds where the baskets are removed.

Testimony indicated that the mileage traveled by the vegetable utility trailers was dependent upon the location of the shed or plant, and their frequency of use dependent upon the crop. When the crop is being harvested, the assertion is that the trailers spend approximately 90 percent of the time in the field and the rest of the time in transporting vegetables in bulk to plant or shed. Growers using such trailers also testified that there was no other conceivable use for the trailers without a solid bed, and that although the use of such trailers was seasonal, insurance covering their operation is usually an automatic inclusion in the grower's comprehensive policy.

Growers and their representative associations requesting that vegetable utility trailers be exempt from registration feel that highway use by the trailers is incidental to their designed use and comprises a very small part of their operation. Trailer owners and users, therefore, are of the opinion that an inequitable situation exists wherein registration fees charged vegetable utility trailers are the same as charged for a vehicle of similar weight and value that is constantly on public roads.

Gondola-type grape tractors

These gondolas are metal containers usually of about two-ton capacity, having an approximate 500 pound tare weight that is increased to about 4,500 pounds when loaded with grapes. The tank is either of the dump type or removable, frame-mounted on two rubber-tired wheels and pulled between the vines by rubber-tired tractors. Grapes are picked from the vines, placed in the gondola and then transported from vineyard to winery. The filled gondola is either pulled to the winery by tractor or truck or it can be removed from its chassis and placed upon a truck for transportation.

Testimony indicated that the mileage traveled by the gondola-type grape tractors was small and their frequency of use was limited to a very few weeks of the year. Growers using this equipment also testified that it has no use other than for grapes, and although gondola-type equipment is a fairly recent innovation in the grape industry, its use will increase because it means increased efficiency due not only to labor saving and sanitary factors, but also to a reasonably prompter delivery of the bulk product as could be realized by using picking boxes. Handling of the grapes is reduced to a minimum because of the elimination of the picking boxes since the grapes as picked are placed directly into the gondolas and are not handled further until dumped into crusher troughs at the winery.

As was the case with vegetable utility trailers, grape growers and their representatives requesting that gondola-type grape tractors be exempt from registration feel that the use and design of this equipment qualifies it for exemption under the currently applied definition.

It should be pointed out that Assembly Bill 52 was introduced because of the legal implication that Section 345 of the Vehicle Code does not permit exemption of grape gondolas and the specific provision had to be made in Section 350 that grape gondolas are exempt, if indeed they are to be exempted. It is assumed that the same reasoning would hold regarding vegetable utility trailers.

And there are apple, walnut, chili pepper and probably a host of other trailers.

Committee Findings

The committee is impressed with the fact that representatives of the vegetable and grape growers and the growers themselves appearing at the hearings were not arguing that implements of husbandry should or should not be exempt from registration fees. They did not seem to be asking for financial relief particularly, but for equity in application of the law. They feel that vegetable utility trailers and grape gondolas fit the current definition as expressed in Sections 345 and 4007 and that as long as that definition exists, their equipment should be exempted.

And so the list enumerated in Section 350 would grow. The Department of Motor Vehicles' representative expressed the feeling that grape gondolas should be given consideration in the currently applied definition.

The committee members appreciate and endorse the sentiment expressed at one of the hearings relating to the desirability of not coming to the Legislature for recognitions and identifications each time a new piece of equipment is placed in service.

The time for an examination of direction is now at hand.

This committee sincerely regrets that it was not able during the 1959-1961 interim period to conduct a more complete study of the entire field of exemption from registration, not only as it applies to the two measures before the committee, but to the entire field, agricultural and industrial. Assembly Bill 52 was introduced during the 1960 Session and referred to this committee in May 1960. The amount of time available since then and prior to the November 15 deadline for completion of this report was not sufficient for the committee to consider with justice the many suggestions presented to it, nor to investigate all areas involved.

The committee does feel, however, based upon its study of the two subject matters in this vast field, that the entire field of exemption from registration needs clarification. There needs to be clear ground rules adopted, not only for those exemptions currently granted, but for the applications that are sure to come in the future.

Committee Recommendations

(1) If the current principle of exempting implements of husbandry is not changed, then vegetable utility trailers and gondola-type grape tractors must be included in the definition of equipment considered to be exempt; and Section 350 of the Vehicle Code should be amended to include these two items. (This recommendation is in line with, and reflects the thought behind, a motion unanimously adopted by the committee during its August 8, 1960, hearing in Sacramento. This motion was made by Assemblyman Walter Dahl, seconded by Assemblyman Myron Frew, and adopted by the committee, as noted on p. 24 of the transcript of that hearing.)

(2) An all-inclusive, complete investigation and re-examination of the entire subject of vehicle registration exemptions should be undertaken during the 1961-63 interim study period with the object of clarifying the subject area toward the end of establishing objective rules and regulations applicable in an equitable manner to all vehicles, agricultural and industrial, that might apply for exemption from registration fees or for reduction of such fees.

(2) Vehicle Weight Fees on Buses

The California Bus Association, representing about 80 percent of the private transit industry in California, believes that immediate steps need to be taken if private transit is to survive and feels that unless the serious financial situation is corrected, the trend toward public ownership is inexorable. Over the years a decline in revenue has led to an increase in fares leading to less patronage of private lines resulting in dropping of unprofitable lines and cutting of schedules. Additional losses in patronage complete the cycle.

The private transit operators feel a glaring error exists when private transit is not allowed to enjoy the same tax benefits applied to publicly owned transit. Introduction of Assembly Bill 79 (Luckel—1959) was designed to provide temporary relief in the form of reducing weight fees from \$160 to \$50 per bus. During this committee's July 25, 1960, San Diego hearing on the subject matter of the bill, representatives of private transit also requested exemption from paying the gross receipts tax of 1½ percent.*

The committee, while impressed with the picture painted of the private transit companies' difficulties, feels that tax relief may not be the complete answer. The private transit companies are asking for the same tax relief afforded public transit companies. There currently are 15 such companies, of the 12 systems reporting in the most recent fiscal year, six showed a profit and six showed a loss, resulting in a total deficit of publicly owned transit of \$5,032,350, in spite of the so-called tax advantage. In this case, taxation forgiveness, or lack of taxation, did not result in a profitable upward economic cycle. Will this same relief enable private companies to upset the downward cycle?

One of the compelling reasons for public ownership is the substantial savings in state taxes, plus a conjunctive argument that resulting savings inure to the benefit of riders through lower fares. Does the deficit bear this out? Does tax relief indeed result in profit? The private companies insist that tax reduction is an answer to their problem, and that a savings of \$5,000 to \$6,000 a year makes the difference between staying in business or not, but this depends upon future patronage and operational costs.

Committee Findings

The committee feels there are many questions in this area that need answering prior to making a decision on an equitable solution. The committee feels that although the provisions of Assembly Bill 79 might grant temporary relief to private transit companies, succeeding years will bring additional requests for other forms of relief.

The committee further feels that a complete economic study of the problems involved in the survival of private transit lines in California be undertaken by the Institute of Transportation and Traffic Engineering, University of California.

(3) Crediting to Counties of Unexpended Construction Moneys

At the request of Chairman Backstraud, Richard Zettel (of the University of California's Institute of Transportation and Traffic Engineering, and consultant to the Senate Committee on Transportation and Public Utilities) outlined the basis and current application of the so-called Mayo Formula for the committee at its June 29, 1960, San Francisco hearing, devoted partially to a discussion of the subject matter of Assembly Bill 2901 (Meyers—1959).

* NOTE: This request recorded on page 15 of that hearing's transcript, was based on the belief that a 1957 amendment had not granted this exemption when in reality it had. Subsequent correspondence between the witness and the Board of Equalization now in committee files contains a correction. It is assumed that the private transit companies may now alter their position and seek exemption only from those state highway user taxes or license fees which are not applicable to publicly owned transit systems.

Adoption of the Mayo Formula in 1947 was predicated in part by the State's assuming full financial responsibility for the construction and maintenance of state highways in cities and the desire to afford some measure of protection for rural and urban areas alike in the application of percentage amounts of money available for construction.

Application of the Mayo Formula follows a number of other allotments. Those funds left after dispensing county and city shares of gas taxes, motor vehicle license taxes, and registration and weight fees, are deposited in the State Highway Fund. Administration and maintenance costs of the fund are "taken off the top," so to speak, of deposited moneys, following which the so-called Breed Formula north-south division is allocated. The Breed Formula currently is a 45 percent north, 55 percent south annual requirement without a termination date.

The Mayo Formula application follows the north-south allocation. At first adoption, the Mayo Formula contained the compromise idea that minimum guarantees based on estimated need percentages be made to each county on the basis that 50 percent of available moneys be spent in the county within a five-year period, the other 50 percent available theoretically for allocation by the Highway Commission to any county.

In the 1947 act, there were provisions for two five-year programs based upon this formula. By 1953, a great many changes had occurred in California, new needs arose and the percentages of need for various counties changed tremendously so that new need estimates were not comparable to those made in 1947. The 1953 Legislature, in an attempt to resolve these differences, weighted 1947 estimates of state highway needs, county by county, into a 1952 estimate, county by county. The 1953 law, the currently prevailing statute, continued the five-year period basis of the Mayo Formula. The last five-year period will expire on June 30, 1963, and if there is no further action by the Legislature, all unexpended, unobligated construction moneys available in northern and southern California could then be classified as "free money," i.e., available for allocation by the Highway Commission to any county.

Testimony presented at the committee hearing indicated that the Mayo Formula is not working equitably and reasonably in a good many counties because old formulas are no longer applicable where highway needs have changed drastically, where differential rates of growth have prevailed in different parts of the State, and where in some areas almost all possible work has been completed.

Additionally, testimony by the State and San Francisco Departments of Public Works delineated a problem peculiar to San Francisco. For the five-year period ending June 30, 1963, an estimated \$105 million will be available under guaranteed accrued minimums for expenditure in San Francisco. Of this total, \$31 million is currently obligated and another \$21 million will probably be obligated for construction projects now under consideration leaving \$53 million. Both public works departments feel that it will be impossible to obligate this balance by the expiration date of the Mayo Formula.

This probability was the reason for introduction in the 1959 Session of Assembly Bill 2901, providing that any portion of amounts allocated for expenditure in a county for highway or freeways that is unex-

pending or unobligated as of June 30, 1963, would remain credited to the county for expenditure within the county without regard to fiscal years for construction of state highways. This proposal was supported by the San Francisco Board of Supervisors, State Senator Eugene McAteer, the San Francisco State Assembly delegation, the County Public Works Department, the Central Council of Civic Clubs of San Francisco, the West of Twin Peaks Central Council, and the Parkside District Improvement Club.

(4) Priority of Tax Liens Under the Motor Vehicle Transportation License Tax Law

In recent legislative sessions, several tax law changes have been aimed at relieving truck dealers of certain burdens of lien costs. In 1957 the rate of transportation tax was reduced from 3 to 1½ percent, resulting in fewer tax delinquencies. In the same year penalties were removed from the priority provisions of tax liens, lessening the amounts paid by truck dealers to secure release of the liens.

The Use Fuel Tax Law was also amended in 1957 to require vendors of diesel fuel to collect the tax from users when selling and delivering fuel into the fuel tanks of motor vehicles, resulting in greatly reduced numbers and amounts of use fuel tax delinquencies, with a correspondingly lower amount paid by dealers to clear tax liens. And in 1959 the lien provisions of the use fuel tax were amended to exclude penalties from the lien priority over the rights of legal owners and conditional vendors.

In the 1959 Session a resolution was introduced (House Resolution No. 385—Summer) requesting a further study of the priority of tax liens under the Motor Vehicle Transportation License Tax Law. The State Board of Equalization is responsible for determining the amount of the transportation operator's liability for the tax, obtaining security for the payment of the tax, and issuing tax clearance certificates prerequisite to transfer by the Department of Motor Vehicles of the registered ownership of the vehicle subject to the tax lien. As such, the board is involved with legal owners and conditional vendors in obtaining security for the release of the tax liens attaching to vehicles in which they have an interest.

The lien for taxes is common in the State's tax laws and under the transportation and use fuel taxes the liens are paramount to private liens or encumbrances and to the rights of legal owners or conditional vendors in motor vehicles. According to the Board of Equalization, these provisions were incorporated for the purpose of reserving the State's priority in recognition of the fact that motor vehicles constitute the principal property of truckers generally, and practically the only property of smaller truckers upon which the State could exercise lien rights for the collection of its taxes.

Prior to resale and transfer of registration of a vehicle that has used diesel fuel or that is operated subject to tax, the tax clearance certificate is issued based on deposits securing the entire amount of tax obligation. Deposits are generally made by the legal owners, or through bankruptcies, insolvencies, assignment for benefit of creditors and other assets of truckers.

In the 1957-58 fiscal year, the board received \$55,000 in deposits representing a \$108 per vehicle average, in 1958-1959, the comparable figures were \$76,000 and an average of \$130.10 per vehicle involved in tax clearance deposits. In 1959-1960, a total tax of \$12.5 million was collected, \$112,568 was deposited with the board for a per vehicle average of \$110.36. Of the total number of vehicles cleared (approximately 600) 437 were cleared for less than \$100 each, and only five were cleared for over \$500.

The contention exists that current statutes regarding the State's prior lien place unjust hardship on legal owners not engaged in the business of for-hire transportation of freight and materials since such owners do not incur the tax debt. At the committee's July 25, 1960, San Diego hearing, those persons arguing that those legal owners not engaged in "for hire" transportation be relieved from prior lien for collection of transportation license tax, felt that registered owners or operators incurring the tax liability should be held fully responsible for the tax.

Currently the lien is against the vehicle and in situations where operators go out of business or become insolvent, trucks are repossessed by the legal owners who then must obtain tax clearances through the process described above. The Board of Equalization is of the opinion that removing lien provisions as to priority rights of conditional vendors or legal owners would make collection of taxes in cases of repossession or operator delinquency virtually impossible.

Suggestions for solving this apparent dilemma included allowing the Board of Equalization sufficient personnel and finances to make more frequent audits of carriers involved in businesses of great risk in order to reduce the number of legal owner losses, enactment of a 90-day-prior-to-seizure limitation as the tax liability of the legal owner to make him responsible only for the amount of tax incurred in the 90 days prior to the seizure, and substitution of some other source of revenue rather than transportation or gross receipts taxes.

Additional suggestions for increasing the amount of security deposits on sales and increasing the amount of carrier bonds were also discussed, but there seemed to be general agreement that these measures, while perhaps reducing the amount of risk involved in truck sales and financing, would probably reduce the number of sales themselves.

Committee Findings

The committee feels that some losses do occur to legal owners in cases of repossession and that some of the suggestions offered at its hearings are probably steps in the right direction, while not completely eliminating the legal owner's responsibility. The committee has been informed that the 1961 Legislature will be asked to consider a number of proposals having a bearing on this subject matter, such as a possible change in the "use fuel" tax law to require collection of the tax by the vendor, and a proposal to move the tax back one step further to the supplier. In light of these considerations and the complexity of the problem presented at the committee hearing, specific recommendations at this time would be unwise without knowing the extent and effect of other proposals in this field to be presented to the next Session.

(5) Suggested Change of North-South Highway Construction Money Formula

California highways are financed through what specialists call a commercial approach wherein users of highway services and systems meet the costs through prices or taxes related to use, an approach embodying the concept of developing a highway system over a period of time. Another feature of California highway development policy is pay-as-you-go financing, inevitably requiring that earnings generated on the entire plan must be accumulated to provide for improvements of specific segments of that plan.

This general financing plan contains the seeds of sectional controversy since user charges, uniform throughout the taxing jurisdiction, and highway costs are markedly different when both are measured in terms of a common unit as the vehicle mile. In other words, constant revenues of particular highways do not balance out. An additional and similar disparity between revenues and costs exists for segments of the highway system in different sections of the State. It has been found necessary, therefore, to provide from time to time a transfer of revenue from one highway to another or from one area to another to improve the whole system at a uniform rate.

Allocation of funds for the system is bound, then, to be a complicated and a controversial matter, magnified because highway needs in all parts of the State are great and generally yield higher figures with each succeeding projection of needs. This is not a new situation in California. As early as 1895 the California Bureau of Highways outlined a statewide system of highways that was supposed to "fix forever the easiest lines of communication," and it was not until 1909 that the state highway system was established. Three successive general obligation bond issues aggregating \$73 million were authorized between 1909 and 1919 to complete the system. In 1923 the State adopted its first gasoline tax, the State's share of which was designated for maintenance and reconstruction. Parenthetically, none of the tax imposed was allocated for new state highways.

In 1927 a special one-cent gas tax was imposed for the specific purpose of constructing state highways and the adoption of the Breed allocation formula provided that 75 percent of the available funds were to be used for the primary state highway system and 25 percent for the secondary system. Primary money was divided at that time between 45 northern counties and 13 southern counties on the basis of highway mileage, and the secondary money was divided evenly north and south. The overall effect of the 1927 version of the Breed formula was that of the total money available for the entire state highway system—not considering the primary-secondary distinction—about 53½ percent was allocated for the north and 46½ percent to the south.

In 1933 the Legislature nearly doubled the state highway mileage by incorporating many miles of county roads into the secondary highway system. The Breed formula was changed so that 50 percent of available construction funds was earmarked for primary highways and 50 percent for secondary highways. The north-south division of funds was continued on the basis outlined in the 1927 formula adoption: primary money on the basis of highway mileage, and secondary money on

an even split basis. The overall effect of the 1933 change in formula—again not considering the primary-secondary distinction—was that about 51 percent of the total money available for the entire state highway system was allocated for the northern counties and about 49 percent for the southern counties.

The last major change in this Breed formula occurred in 1947 with the adoption of the Collier-Burns Highway Act that eliminated the primary and secondary classifications and provided for distribution of funds on a 45 percent north and 55 percent south basis. The 1947 Legislature was presented with two sets of facts concerning the allocation of funds for state highway construction. An estimate of highway deficiencies or needs showed 57 percent to be in the north and 43 percent to be in the south; motor vehicle registrations showed 60 percent of the vehicles to be in the south and 40 percent to be in the north. It has been suggested that the 1947 Legislature struck a compromise between these sets of figures and facts by establishing a distribution of funds on the basis of 45 percent for the 45 northern counties and 55 percent for the 13 southern counties.

The 45/55 allocation exists today. Assembly Bill 2680, introduced in the 1959 Session by Mr. Rees, proposed a change in the Breed formula to a 40/60 allocation basis. At the committee's November 14, 1960, San Francisco hearing, devoted to a discussion of the subject matter of that bill, testimony indicated that according to an engineering estimate of state highway needs made in 1952 and presented to the 1953 Legislature the northern counties in 1952 had 52 percent of the needs, the southern counties 48 percent. Motor vehicle registrations in the same year continued to show about 60/40 south and north.

The adoption in 1959 of the California Freeway and Expressway System added 12,400 miles to the California State Highway System. The 1958 need estimates indicated that at that time the northern counties had in excess of about 46 or 47 percent of the needs, compared with 40 percent of the revenue source. The Division of Highways is completing another estimate of deficiencies or needs following the construction accomplished since the 1958 estimate was made, but some preliminary figures indicate almost 50 percent of the needs to be in the north.

There are of course, and there will continue to be, needs in every part of the State. The 1960 dollar estimate of needs amounted to approximately \$11.5 billions and, tentatively accepting the estimated needs basis, there was in 1960 a 50/50 division of needs and a 40/60 "revenues generated" estimate.

Committee Findings

The committee is aware that funding procedures and allocations for the State's highway system is a complicated problem, and that the Breed formula, a short history of which is presented above, is merely one part of the entire allocation problem. The committee is also aware that the 1961 Legislature will be asked to consider the entire problem and must take a long, hard look at the overall situation of allocation of money for highway construction, including such integral subject matters as new need estimates, automobile registrations, estimated funds and the Mayo and Breed formulas.

The committee feels that it cannot recommend an adjustment of the existing Breed formula on the basis of its one-day hearing during the preceding interim.

NOTE: During that hearing the following statement was read into the transcript record:

MINORITY REPORT RE ASSEMBLY BILL NO 2680

The evidence presented to the Assembly Interim Committee on Transportation and Commerce at a hearing held on November 14, 1960, in favor of the recommendation to the Assembly for the passage of this bill places the burden of proof to the contrary on the opposition. The fact that more Members of the Assembly from the north were present at the hearing does not indicate the facts of the case one way or another.

(Signed) CHARLES EDWARD CHAPPEL
TOM BANE
CHET WOLFERTUM

B. PROBLEMS OF TRAFFIC MOVEMENT

(1) Defining and Regulating Authorized Emergency Vehicles

Historically, the term "authorized emergency vehicle" originally included only those vehicles used in the three basic emergency services: police, fire and ambulance. Today the Vehicle Code contains 21 sections designating certain vehicles as authorized emergency vehicles, and in addition there are 10 other sections permitting amber or red lamps as identifying lamps on other type of vehicles. Through the years, requests for emergency classification have continued, and each succeeding Legislature has granted inclusion within the definition in piecemeal fashion. The result has been a lack of consistent and definite legislation, and the Legislature can logically expect more types of vehicles to request classification as authorized emergency vehicles in the future.

Such vehicles as those engaged in air pollution control district work, mosquito abatement work, tow cars, school buses, armored cars, coroners' vehicles, disaster vehicles, public utility vehicles and fish and game patrol cars are now included in an extremely broad category of vehicles authorized to maintain a siren and red light.

During the 1959 Session, the late Assemblyman Seth Johnson introduced Assembly Bill 2540 with the hope of clarifying and setting up standards as to what should be considered an authorized emergency vehicle on California's streets and highways. In the general opinion of law enforcement agencies, the use of the siren and the red light are now so common that their usefulness is destroyed and they are ignored by a large part of the public.

A basic traffic control principle is that a flashing red or red light means "stop" and an amber one means "caution." Where the application of those vehicles authorized to employ the red light is too broad, the contention is that the right-of-way supposedly granted to emergency vehicles is abrogated and made meaningless.

During this committee's November 19, 1959, Los Angeles hearing and August 8, 1960, Sacramento hearing, the subject matter of Assembly Bill 2540 was discussed. Testimony indicated that in Southern California especially where often a great many departments operate together over great areas, sirens are no longer effective and some emergency vehicles are now equipped with the so-called Grover type

air horn in order to gain rights-of-way when necessary. Because of the over-application of the siren on many categories of vehicles, the same problem plagues some eastern states who now use six-trumpet air horns that are within 10 decibels of breaking human eardrums. The legality of the use of air horns on authorized emergency vehicles in California is not clear, but the fact that some departments consider them essential indicates the critical extent of the problem.

Those witnesses testifying on the possible use of air horns stated that these devices will not solve the over-usage of sirens but will create additional problems, and that the solution lies in gaining back respect for sirens. Their loss of effectiveness depended upon in the past seems to be indicated in the fact that in the Los Angeles area, for example, accident rates during response to emergencies have increased better than 200 percent in the last five years despite intensive driver training.

Medical authorities in attendance at the committee hearings stated that recent legislation requiring a trained attendant in ambulances has led to a slight curtailment in the use of red lights and sirens since the necessity of speed does not exist as it did before. And an experiment on Los Angeles freeways involving voluntary compliance with a request not to use sirens by all ambulance services has had good results. The California Medical Association encourages siren use only when clear right-of-way is needed and then at reasonable rates of speed, and feels that the use of sirens is not a license to drive a vehicle 90 miles per hour and perhaps further injure patients and endanger others.

Other testimony indicated that while such examples of voluntary self-discipline restricting use of red lights and sirens by those currently authorized emergency vehicles might lead to expeditious but not dangerous driving habits, there is immediate need for tighter definition and application in the authorized emergency vehicle statutes.

In order to give further consideration to possible solutions to this complex problem, this committee appointed an advisory committee for this study area. The report of this advisory committee is contained herein as Part II, C.

(2) Feasibility of Using River Beds as Freeways

Since 1930, various suggestions have been made for using California's river beds for freeway locations. Certainly any solution tending to alleviate the controversial matter of freeway location would be welcome. But, although there have been numerous suggestions and several studies of the feasibility and desirability of river beds doubling as freeways, there has been no actual instance of combined usage.

There have been instances, however, of combined rights-of-way where separate channels are constructed beside freeways to carry water and separate channels are constructed beside rivers to carry traffic. Indeed, the first major freeway in the Los Angeles area, the Pasadena Freeway, was built partially alongside the Arroyo Seco Channel, and the Golden State Freeway later was built next to the Los Angeles River along part of its course. And such later freeways as Burbank and Long Beach were constructed with a flood control channel as part of the freeway. In the Los Angeles area, the State Division of Highways

has co-operated with the Los Angeles Flood Control District and the United States Corps of Engineers in using joint rights-of-way for both highway transportation and water control.

Joint usage of one channel for both highway transportation and water control seems to be beset with a number of problems discussed during this committee's October 3, 1960, hearing in Los Angeles where House Resolution No. 44 (1960 Budget Session) was given consideration.

The author of the resolution directing this committee "to ascertain, study and analyze all facts relating to the feasibility and desirability of using river beds, such as the Los Angeles River, for freeway purposes" was Assemblyman John L. E. Collier of Los Angeles. Mr. Collier, during the debate on the resolution in the 1960 session and during the committee hearing, stated that although the specific reason for his introducing the resolution was the possible use of the Los Angeles River instead of the recommended extension of the freeway through the City of Eagle Rock, he hoped that the committee study would produce results applicable to other California rivers as well.

California's rivers, however, have certain natural features that highway engineers feel are not applicable to or advantageous for highway traffic and freeway construction. The majority of California's rivers are not sufficiently wide for freeway use, the Los Angeles River for example having a maximum width of 130 feet. Additionally, the natural curves and alignment of rivers are not considered proper traffic control curves since sharpness of freeway curves often leads to serious accidents. And, considering the need to build freeways where traffic will use them, the origin and destination of river flow is many times not coincidental with the origin and destination of traffic flow.

Construction of a freeway in a river bed would affect local water rights of a long-standing nature. As water flows down river, some of it percolates underground. Water rights of people obtaining such percolated water through pumping systems would be seriously impaired by a layer of concrete over the river bed. In order to allow for this recharge of water, some areas of the Los Angeles River are not paved but are covered with cobblestones.

Another major potential incompatibility of a dual-purpose channel for water and traffic flow is the design necessary for an adequate freeway ramp system. A ramp from the bottom of the river to the surface would affect water flow to a measureable degree since the avoidance of a serious backlash problem in traffic ingress and egress would not accommodate a great deal of water during high storm intensity. Additionally, anticipated volumes of water flow during flood stages would necessitate some type of gate device for closing off freeway ramps to provide for the desired streamline river flow to prevent turbulence.

After every storm, debris brought downriver is deposited on the river bed by subsiding water. If the river bed were also used as a freeway, this would mean a shutdown period on the freeway after each storm not only to allow removal of naturally deposited debris but also the debris held fast by freeway sign standards and other appurtenances. And the freeway could not be used during the period of a storm, whether of flood proportion or not. During the 1940-1941 winter period in Los Angeles, for example, there were no severe

storms but there were a great many storms, and there were 78 days during which the mean daily flow in the Los Angeles River exceeded 200 cfs.

Flood control channels and their possible use for freeway locations were also discussed at the Los Angeles hearing. Testimony indicated that these channels, to be effective, are used with retarding reservoirs and conservation reservoirs and designed on rather steep slopes with very high velocities. Hydraulically, it is essential that channels are not impeded in such ways as to create waves or obstructions destroying the channels' effective use. In anticipation of storms, reservoirs are drawn down, with a resultant discharge of water into flood control channels, the period of discharge being extremely variable and dependent upon watershed situations, previous rainfall and the entire meteorological situation.

As an example of construction and design, the Whittier Narrows Dam flood control channel was described as consisting of a heavy rock riprap, trapezoidal section with drop structures from 10 to 15 feet in height, with stilling pools at the bottom and subdrainage systems to take care of high groundwater occurring after wet years. It was pointed out that to protect these necessary features, all of these structures would have to be incorporated into any freeway using the channel.

Finally, it was suggested that since flood drainage areas are usually some distance from residential and industrial developments and since the average trip in California is less than eight miles, the use of these areas as freeways would not be particularly effective.

During the Los Angeles hearing, the committee requested statements from various governmental agencies concerned with the problem but not in attendance at the hearing. In accordance with this request, the City of South Pasadena directed a letter to the committee, stating in part that "The mere fact that traffic must be diverted from the channels during the rainy season and thereby nullifying a fundamental concept of sound highway engineering, i.e., providing an all-weather, all-year freeway, seems to be ample justification to discontinue any further studies."

The City of Burbank stated that "another matter that might be considered is that of having a system of highways dependable at all times for use of the military, or for evacuation purposes in times of extreme emergency. As has been pointed out, the use of the river channels would be interrupted during the rainy season." The US Army Corps of Engineers has estimated that "the cost of a feasibility study should be . . . about \$500,000" and the Los Angeles City Engineer feels that "the existing river beds are wholly unsuitable for freeway purposes, and that the cost to make them suitable would be prohibitive."

Letters from the Cities of Pasadena and Glendale appear in their entirety on pages 27 and 28 of this report.

Committee Findings

The committee feels that any practical solution to the controversial subject of freeway location should be looked upon with favor, but that the possibility of using river beds and flood control channels for freeways is confronted with a multitude of problems insurmountable in nature. The use of a river bed would mean that traffic flow would be

dependent upon the whim of the weather, and that cleaning up of debris left by storms would be too time-consuming and expensive. The use of flood control channels would mean an impossible combination of design.

The committee feels that further consideration of the possibility of using river beds as freeways should be discouraged.

CITY OF PASADENA

PASADENA, CALIFORNIA, October 21, 1960

MR. EDWARD T. TELFORD

*Asst. State Highway Engineer, California Division of Highways
120 South Spring Street, Los Angeles 12, California*

DEAR SIR:

Subject: House Resolution No. 44—Use of Riverbeds for Freeway Purposes

Reference is made to your letter dated October 6, 1960, requesting comments on the use of riverbeds for freeway purposes, as suggested in House Resolution No. 44 of the 1960 Session of the Legislature.

The dual use of riverbeds for freeway purposes will create many complex problems. There will evolve a tremendous amount of legal, technical, and engineering problems in the joint use of such right-of-ways. There are enough problems under a single purpose, and in particular, for street and highway purposes. Our department wishes to emphasize the movement of people, goods and services in the field of transportation is entirely incompatible with the movement of storm water in drainage channels. Transportation routes do not follow the lines of the drainage channels, since the latter is a geological phenomenon. In the field of transportation, we try to develop the shortest route for the movement of people and materials from origin to destination. It is not conceivable how riverbeds can be coincidentally available for right-of-way for street and highway purposes. The freeway location should be determined by sound engineering studies and not be dependent upon previously determined alignments such as riverbeds.

It is the entire belief of this department, the Division of Highways, in making their route studies for street and highway purposes will use the soundest engineering studies possible, and, if it is at all feasible, would use riverbeds for street and highway purposes; but as repeated before, it is unlikely, and almost entirely unfeasible, to use riverbeds for freeway purposes.

Respectfully submitted,

(Signed)

FRITZ ZAPP

City Engineer-Superintendent of Streets

CITY OF GLENDALE

GLENDALE, CALIFORNIA, October 10, 1960

MR. EDWARD T. TELFORD

*Asst. State Highway Engineer
State of California, Division of Highways
120 South Spring Street, Los Angeles, California*

Attention: Mr. George A. Hill, District Engineer

Subject: Legislative House Resolution No. 44

DEAR MR. TELFORD: For many years people have suggested the use of the Los Angeles River and the Verdugo Wash rights-of-way for the construction of major highways. This office has done considerable work investigating the use of the Verdugo Wash right-of-way for a major highway and each time we have come up with the conclusion that it would be highly undesirable for the following reasons:

The Verdugo Wash right-of-way is only 90 feet wide, which is much too narrow for the modern freeway or even for a major highway. The construction of the freeway over this 90 feet would involve the acquisition of additional right-of-way on both sides. It would involve the construction of a roadway above the wash on either a reinforced or structural steel structure. The cost of this structure has been calculated at various times and has proved prohibitive.

If a freeway was placed over the wash the bridge problems on crossing streets would become very complicated, involving long approach ramps and high bridge structures.

The use of the wash floor itself for a freeway would not be possible as the velocities in the Verdugo Wash in storm flows are very high and these velocities have to be checked by velocity-reducing devices in the channel bottom so that they do not cause undue turbulence as the stream enters the Los Angeles River. Past history will show that the Verdugo Wash in flood has caused the Los Angeles River to leave its banks and wash out long stretches of highway. The U S engineers have constructed a very expensive velocity-reducing device at this juncture which involves steps in the bottom of the channel, which renders the channel entirely useless as far as automobile traffic is concerned. Also, the curves in the channel are too sharp for the negotiation of vehicles. Also, the channel, for a major portion of its length, is not one channel but three, as the county had constructed a channel of approximately 40 feet in width with eight-foot side walls. When the U S E D came in to expand the channel they expanded the width to 88 feet by building auxiliary channels on each side with 16-foot-high walls. This three-channel arrangement would make the wash entirely unsatisfactory.

The channel has to be reserved, even in the summertime, for nuisance flow, and in the wintertime during major storms I have seen water flowing in the channel eight feet deep. A freeway constructed at this location would be of only intermittent value during the winter months.

As for widening the channel and using a roadway in the present channel elevation, this would be very difficult in spots as the City of Glendale has a reservoir at one section that is bisected by the channel.

I have not discussed in this letter any possibilities on the use of the Los Angeles River right-of-way as this stream is already paralleled by the Golden State Freeway, part of which is constructed and part of which is under construction.

Very truly yours,

(Signed)

WM L O MARTINI
Director of Public Works

(3) Vehicle Weight Limits on City Streets

Generally speaking, a reasonable solution to any problem requires a reconciliation of interests and points of view. In the specific case of local ordinances restricting maximum allowable weight limits of vehicles using city streets, a city's obligation to protect its citizens and their property often encounters recognition of the necessary movement of commercial traffic.

California's cities' valid assumption of the right to restrict weight limits on streets over which they have exclusive jurisdiction is reflected in current statutes. Additionally, city regulation of state highways within the city may be approved by the Department of Public Works upon the designation of alternative routes that heavy vehicular traffic can use.

Certainly no one can deny that the movement of heavily laden vehicles is important to commerce and industry and indeed necessary for the development of cities. Certainly no one can deny that local governmental bodies have the duty and right to restrict to a reasonable degree commercial traffic weight limits where restriction is based on protection of people and their property.

Application of local ordinances affect traffic flow. This is especially true in expanding metropolitan areas where annexation leads to contiguous city boundaries and to boundaries encompassing within city limits streets traditionally used as thoroughfares. Local ordinances could have adverse effects upon commercial traffic flow where alternative routes are not available within reasonable distances. In areas where several cities use the same thoroughfare, a lack of continuity and uniformity could result from the application of several different ordinances.

And the rerouting of heavy traffic in one city often leads to similar action in neighboring cities because of pressures placed upon other streets by the rerouting. This chain reaction of posting streets usually has its basis in the city government's efforts to meet its obligation to public safety and convenience.

These and other facets of the problem were discussed during this committee's June 28, 1960, hearing in San Francisco where the subject matter of Assembly Bill 2755 (Dahl—1959), was considered. Provisions of this bill held that "no city ordinance reducing the gross maximum weight of a vehicle shall be effective when it operates to impede the normal flow of traffic unless there is provided reasonable alternative routes." It was pointed out that this would provide a solution where alternative routes were available, but that within some cities there are no alternative routes physically available.

It was also suggested that perhaps an answer to the problem might be the establishment of a county traffic commission having authority and responsibility for a countywide master system of through streets. Opposing this suggestion was the thought that the use of city streets is a local issue and that cities could, through adequate hearings, notices and signs, retain a necessary degree of home rule in this field.

Committee Findings

The committee feels that a problem regarding vehicular weight limits may exist in certain areas and that a solution to the problem would require reconciliation of the viewpoints outlined above. The committee feels that additional investigation of this subject is necessary before it can recommend a reasonable solution equitable to all concerned.

(4) Mass Transportation in the San Francisco Bay Area

Although the committee received lengthy and interesting testimony concerned with the general areas of rapid and mass transportation in the Bay Area, the number and variety of subject matters discussed during the committee's December 17-18, 1959, San Francisco hearing did not lend themselves to easy condensation or summary. And while the committee does not necessarily imply endorsement of the many views presented, much of the testimony is available from other sources.

Sufficient copies of the transcript of the hearing have been prepared and are available free of charge from the committee office for those persons interested in the details of the testimony.

The committee feels the Legislature should continue to maintain a basic interest in this complex and important problem. Sufficient information was not presented to the committee during this interim, however, upon which to base recommendations for positive action in this area.

(5) Left Turns at Intersections

Procedures, rights-of-way and responsibilities in making left-hand turns at intersections constitute a perennial problem confronting motorists, law enforcement agencies and legislatures throughout the nation.

There is no easy solution, many have been offered, adopted, and subsequently amended. The latest attempt at clarification in California was Assembly Bill 2124 (Johnson—1959), referred for interim study.

and considered by this committee during its August 24, 1959, Sacramento hearing. During the hearing general agreement was reached that solution of the problem in areas of heavy traffic probably lies with such traffic engineering programs as three-phase signals, intersection redesign or with prohibition of left turns entirely.

While this committee has reached no decision on the proper direction or type of solution to this problem, it believes that a history of the various amendments to the left-turn code section will be helpful. This brief outline (provided by Harry V. Cheshire, Jr., Automobile Club of Southern California) is included here for interest and informational purposes.

Prior to amendments made at the 1957 Session of the State Legislature, Vehicle Code Section 551 (now Section 21801) subdivision (a), provided that the driver of a vehicle within an intersection, intending to turn left, had to yield the right-of-way to any vehicle approaching the intersection from the opposite direction and so close as to constitute an immediate hazard. Subdivision (b) imposed what might be called a reciprocal obligation upon drivers approaching from the opposite direction.

1957 Amendment

In 1957, Section 551 was amended in two respects. The reference to a vehicle "approaching" from the opposite direction was changed to a vehicle "which has approached or is approaching the intersection" from the opposite direction. The reason for this change was that a court decision had held that when a vehicle was stopped at an intersection in obedience to a red signal, such vehicle was not "approaching" the intersection, and therefore, a left-turning driver was not under an obligation to yield the right-of-way to such a stopped vehicle. Thus, in the ordinary situation at a signalized intersection, with vehicles facing in opposite directions stopped in obedience to a red signal, the court decision said, in effect, that a left-turner would be free to "dart" across in front of opposing traffic as soon as the signal changed to green. The amendment was intended to overcome the effect of such decision.

The second 1957 amendment changed the phrase, "constitute an immediate hazard" to "constitute a hazard at any time during the turning movement." This was because under the prior language there was always a question as to the intent of the section regarding the exact point in time at which a vehicle would constitute an immediate hazard.

There were two views. One view held that the former language applied only to those vehicles which constituted an immediate hazard at the time the left-turning vehicle first reached the intersection. Thus, it was argued that when a left-turning vehicle reached the intersection, if the driver yielded to five or six cars (or cars within a certain distance) approaching from the opposite direction in a steady stream of traffic, he then could, with impunity, make his left turn, even though he interrupted the steady stream of traffic.

The other view held that the language applied to those vehicles which constituted a hazard to the left-turning vehicle at any time during the turning movement. Thus, a left-turner could not interrupt a steady stream of oncoming traffic, because as each approaching vehicle passed, the next one in turn would become a hazard to the turning vehicle.

The amendment was intended to resolve this question by adopting the latter view. By so doing, it was felt that a greater burden would, and should, be placed upon a left-turning vehicle than upon a vehicle proceeding straight through an intersection. Also, the amendment was based upon the premise that when traffic reaches the volume where left turns would become practically impossible, the solution would lie in appropriate traffic engineering, and such conflicts could not possibly be solved by written right-of-way rules alone.

Although consideration was given to the complete elimination of subdivision (b) in 1957, that provision was retained with the thought that there might be certain instances in which this subdivision would be applicable, such as the following:

(1) A left-turning driver, having yielded, continues his turn but is forced to stop in the intersection to yield to a pedestrian in a crosswalk parallel to his original direction of travel,

(2) A left-turning vehicle is on a street having three traffic lanes in each direction. After having yielded to several approaching cars, there being but one other vehicle well back from the intersection, the left-turner commences his turn. The vehicle well back from the intersection speeds up and moves from the left lane into the right lane, attempting to cut in front of the left-turning vehicle, and

(3) A left-turning vehicle is stopped at a signal. When the light turns green, he yields to approaching vehicles than starts his turn. A car parked along the curb, headed in the opposite direction, suddenly pulls out from the curb and enters the intersection.

In these examples, if oncoming traffic failed to yield the right-of-way, subdivision (b) of Section 551 would provide a basis for enforcement action.

Court Interpretation of 1957 Amendment

The Appellate Department of the Los Angeles Superior Court in *People v. Miller* (1958) interpreted Section 551 to require the left-turner to yield the right-of-way only to those vehicles which constituted a hazard at the time the left-turning vehicle first yielded the right-of-way. The court relied upon the provisions of subdivision (b) and apparently ignored the obvious legislative intent of the 1957 amendment which added the words, "hazard at any time during the turning movement."

The effect of the opinion was to nullify this amendment and to restore much of the confusion in the interpretation of Section 551 which existed prior to the amendment.

Proposed 1959 Amendments

Because of the interpretation of Section 551 in the *Miller* case, it appeared desirable to eliminate the requirement in subdivision (b) that a vehicle proceeding straight through an intersection must yield the right-of-way. It was also felt, however, that such a vehicle should not be given complete immunity from civil liability in the event of reckless or negligent conduct. Thus, the amendment as contained in A. B. 2124 (Johnson—1959) was designed to eliminate the duty upon the "straight through" driver to yield the right-of-way from a criminal

standpoint, but to preserve the duty upon such driver to exercise due care from a civil liability standpoint

The amendment was first suggested by the Los Angeles Police Department, and was considered and approved by the Advisory Committee on Motor Vehicle Legislation. It was patterned somewhat after the language of subdivision (b) of old Section 562 of the Vehicle Code, which dealt with the duty of the driver of a vehicle to exercise due care for the safety of the pedestrian crossing a roadway at a location other than within a crosswalk.

Under the proposed Johnson bill a left-turner would have to yield to all vehicles coming from the opposite direction until there was a clear break in traffic sufficient to give him a reasonable opportunity to effect the left turn in safety. Under those circumstances, the driver coming straight through would have to refrain from reckless or other highly improper conduct which could result in a collision.

Another amendment, similar to the Johnson bill, was introduced by Senator Christensen (S B 1018) in the 1959 Session. During the final days of the session the bill was heard by the Senate Judiciary Committee, which decided that the civil liability aspects of the bill should receive additional study and the bill was referred to interim study.

C. SUGGESTIONS FOR IMPROVING SAFETY ON STREETS AND HIGHWAYS

(1) Transportation of Flammables, Corrosive Liquids and Radioactive Materials

As of April 1960, there were 1,301 tank trucks, 490 tank semitrailers and 1,531 full trailers licensed to carry flammable and corrosive materials over California's highways. There are innumerable different local ordinances pertaining to the construction and operation of tank trucks hauling flammables. There are cities and counties requiring a variety of construction components such as compartmentation, internal valves, dome covers, overturn rails and the like, and there are local areas where there are no such regulations. United States government installations have other differing sets of regulations. As an illustration of local variety, Los Angeles City and Los Angeles County have different sets of tank truck classifications.

The increase in the number of operating tank trucks and the great variation between local ordinances has led to a situation wherein enforcement and uniformity are particularly difficult and operation of the legitimate trucking business is adversely affected. There is no uniform construction standard to protect California's citizens and to allow transporters of hazardous cargoes the freedom to pursue their business throughout the State.

To conduct a study into practical and reasonable requirements representing a minimum standard of fire safety was the purpose of House Resolution No. 308, introduced at the 1959 Session by the late Assemblyman Seth Johnson. The subject matter of this resolution was discussed at this committee's May 16-17, 1960, Bakersfield hearing and October 3, 1960, Los Angeles hearing. These hearings were devoted to ascertaining the nature and extent of the problems involved in transporting flammable and corrosive liquids, to determine the causes of

accidents involved in the transport of these materials, and to receive tangible proposals that may lead to correction or amelioration of the situation

There currently are six sections of the California Vehicle Code dealing with flammable liquids. These sections define those liquids, relate to shutoff valves, traffic control of vehicles carrying flammables over grade crossings, the display of identifying signs and prohibit vehicles hauling flammables from carrying explosives. Federal Interstate Commerce Commission regulations contain approximately 50 different sections on transportation of flammable and corrosive liquids, and national standards may not apply in California.

While it was pointed out during the hearings that one driver error can negate all structural requirements, the adoption of uniform regulations for the construction and operation of vehicles carrying such materials was desirable. With such new technological developments as jet fuel, oxidizing materials for rockets and others, it was also stressed that whatever uniform regulations finally were adopted by California, application of those regulations should not be too narrow to exclude future technological developments but should endeavor to cover the whole broad range of dangerous or hazardous cargoes.

For example, the transportation companies and such public service agencies as the fire service indicated they are greatly concerned today with the amount of material that is being moved over the streets of the cities and towns of California that the average person is unaware of, such as concentrated fluorine and concentrated materials used as exotic fuels in jet planes. They not only present a fire hazard but some are extremely toxic, even more so or equal to cyanide, for example. Some are also extremely unstable.

Other aspects of this subject discussed at the hearings were truck routings, inspection systems, enforcement problems, financial responsibility in accidents, driver qualifications, types of commodities transported, identification markings on trucks, National Fire Protective Association Standards 385 and 58, and the evolution on the Pacific Coast of a method of design known as "frameless construction." Because of the extremely technical and detailed analysis required prior to any presentation of equitable and uniform regulations in this field, this committee does not feel competent to recommend legislation to solve these many problems.

Following the Bakersfield meeting, an advisory committee was appointed representing such areas as transporters, tank truck manufacturers, flammable material producers, the fire services, and state and local enforcement agencies. In organizing the advisory committee, it was decided to divide it into two subgroups for the initial studies. One group studied construction standards, design criteria, and areas not presently covered in national standards or felt to be inadequate in national standards, the other group worked on operating procedures and driver qualifications. Each of the groups had meetings in various places throughout the State. On August 4 and 5, 1960, the two subgroups met, each with its basic report which, in effect, created the skeleton on which the advisory committee's report and recommendations are based. The advisory committee's report is included herein at Part II, B.

Another subject matter under discussion at the committee's October 3, 1960, Los Angeles hearing was that contained in House Resolution 259 (Chapel—1959), relative to the possible need for additional legislation in the transportation of radioactive materials. Current statutory requirements in this field are contained in Division 14.5 of the Vehicle Code, Sections 33000-33002. These sections give the State Fire Marshal authority to adopt rules and regulations governing the transportation of any material or combination of materials that spontaneously emits ionizing radiation not exempted from the packaging, marking, and labeling requirements of the Interstate Commerce Commission.

Although this authority was granted during the 1959 Session, the State Fire Marshal had not, at the time of the October, 1960, meeting, held any hearings on proposed regulations because of his unfamiliarity with the subject matter. Testimony from the Fire Marshal indicated that jurisdiction in this matter more properly belongs to the State Department of Public Health since radiation hazards are more closely related to health problems than direct fire problems and because the Fire Marshal does not have staff properly trained to draft and to enforce any regulations that may be adopted.

Assemblyman Chapel, author of the 1959 legislation adding Division 14.5, and Col. Alexander Grendon, California's Co-ordinator of Atomic Energy Development and Radiation Protection, agreed that a transfer of jurisdiction would be logical and beneficial. Currently the Atomic Energy Commission is authorized to transfer some of its exclusive control of radioactive materials to those states ready to assume control, and if and when California assumes some authority in this field, testimony indicated that responsibility for licensing, inspection and transportation regulations should be lodged in one agency, preferably the State Department of Public Health.

Expert witnesses further felt that any legislation authorizing such transfer of authority from the State Fire Marshal should also include clarifying language that does not encourage excessive restrictions, but requires mandatory adoption of regulations with enforcement by all state and local agencies with the capability.

(2) Regulating Unsafe Loads

(a) *Unloading Logs at Safe Places*

The perennial problem of overload on trucks using public highways and endangering other highway users was again considered by the committee, especially as it refers to unloading logs.

Current statute provides that traffic officers may stop unlawfully loaded vehicles and require correction of the load "at a suitable place." Correction or adjustment in this manner leads to several hazards, not only to other highway users but to logging truck drivers. Dropping a chain or binder and rolling off a log alongside the highway, or sawing off parts of logs and leaving them is extremely dangerous and destroys merchantable timber. Danger also exists where drivers attempt re-loading or removal of portions of a load to render it safe or reduce it to lawful limits without the use of proper equipment.

To attempt alleviation of these dangers, Assembly Bill 988 was introduced by Mr. Belotti during the 1959 Session. Provisions of this bill would have permitted moving an overloaded vehicle to a place

where sufficient and proper equipment was available for adjustment of the load. Testimony presented at the committee's June 30, 1960, San Francisco hearing, where the subject matter of the bill was discussed, indicated that while there are innocent and deliberate overloads, safety factors would not be met by provisions of the bill since danger to the motoring public would still exist while unsafe loads were being moved to the location of proper unloading equipment.

Additionally, there were suggestions that perhaps the best time to correct overloaded vehicles is before they move onto the highway. Other suggested solutions ranged from requiring companies receiving loads to pay overload fines, to having movable weighing stations available for logging truck use wherever they entered public highways, to re-examining weight tolerances that have in fact become maximums wherever they are allowed.

Committee Findings

The committee feels that efforts to determine through legislation "a safe place" for unloading logs are beset with a host of problems whose solutions are not easily discernible or enforceable. The committee further feels that the best solution probably lies in the area of correcting overloads prior to the time the logging trucks use the highway, and that additional study should be given this suggestion.

(b) Additional Regulations for Loading Cotton Bales

In at least one California judicial jurisdiction, the contention exists that although general code sections provide that all loads must be safe, the absence of any specific statute or regulation covering the specific type of material to be used to secure cotton bales on trucks or trailers makes it difficult to obtain a conviction on an alleged violation. A driver may be cited for hauling an unsafe load, but according to one interpretation, determination of guilt and levying of a fine is not possible because details of what constitutes safe loads on cotton bales are not specified.

The California Highway Patrol, on the other hand, feels that sufficient coverage of types of loads not described specifically is afforded in general terms by Section 24002 of the Vehicle Code. This section prohibits the operation of unsafe vehicles, including unsafely loaded vehicles, providing that " * * * It is unlawful to operate any vehicle or combination of vehicles which is in an unsafe condition, which is not equipped as required by this code, or which is not safely loaded." Section 24002, then, is used by the Highway Patrol as the citable section for prosecution in instances of alleged unsafe loads of cotton bales, since these bales are not specifically covered by other code sections.

There currently are several code sections detailing the binding material and height of load relating to the number of hay bales. And there are sections applicable to securing iron, steel, and other such products for which administrative regulations are being drawn up. The desirability of maintaining sufficient flexibility in regulations in the event better methods or materials develop was part of the dis-

cussion of the subject matter of House Resolution 32 (Winton—1960 1st Ex) heard at the committee's July 26, 1960, San Diego hearing.

Testimony also pointed out the fact that the Highway Patrol currently has no authority to adopt administrative regulations on cotton bales. Regarding the statutes covering hay bales, it was suggested that these regulations in the code, adopted by the 1957 Legislature, are now considered obsolete in some respects and should be corrected.

Committee Findings

The committee finds that some question exists in some quarters regarding the application of general code sections to specific types of loads deemed to be unsafe. If specific regulations are necessary for clarity, the committee recognizes the need for retaining sufficient flexibility in such regulations.

- The committee recommends, therefore, that the California Highway Patrol be given authority to draw up administrative regulations regarding the types, number, size and strength of binders used for hay and cotton bales, such regulations to be developed in conjunction with proper hearing procedures.

(3) Consideration of Vehicle Safety Devices

This committee cannot recommend the use or nonuse of any particular device used as a vehicle accessory. Two vehicle safety devices were discussed during this committee's June 29-30, 1960, San Francisco hearing and the committee received testimony on the advisability of these types of devices.

Ignition Lock and Brake Reminder Combination

This patented device is not currently in production, but would make it impossible to shut off the engine unless the emergency brake had been applied. It could either be adapted to automobiles as an accessory or could be installed as part of the ignition lock at the manufacturer's plant. There is nothing in present California statute preventing the sale, installation or use of such a device.

Concern was expressed over the possibility of this device manufactured as an integral part of the ignition lock in relation to widespread practices of automobile manufacturers' not setting hand brakes or engaging transmission lock pins during car shipments, since either of these actions could result in damage to cars in transit.

Other testimony suggested that this device would prevent the driver from exercising the final measure of control in the event of brake failure—turning off the ignition. Similarly, the front seat passenger could not turn off the ignition in cases of sudden driver disability.

Compressed Air Brake Warning Device

This device connects each brake assembly to a button on a truck dashboard and an amber light showing on any button indicates that particular brake assembly in need of attention. This device indicates the amount of push-rod travel on each brake, the driver thereby knowing how much reserve braking power there is. If the push-rod travels too far, the driver knows in effect that he is running out of brake. This device, currently on the market in California, is used by some trucking firms and there is nothing in statute prohibiting its use.

Other warning devices currently in use by California truckers include whistle and flag systems in which the loss of compressed air is indicated by the whistle going off or the flag coming down in the truck cab. And some lumber trucks incorporate a type of device bringing the vehicle to a complete stop in case of air failure.

Practical safety devices can assist drivers, but perhaps driver education and alertness are the key factors in avoiding accidents. And with all brakes, proper maintenance is the important factor. Testimony at the committee hearing was to the effect that if safety devices are properly maintained, their use was advantageous, but a burned out microswitch or light does not solve the problem of warning the driver. Several witnesses said that the important thing is to get a device that will, when it does fail, fail safe.

Additionally, testimony indicated that inside cab lighting should be kept as simple and functional as possible since too many lights on the dashboard defeat their purpose by distracting drivers. At the hearing, drivers themselves questioned whether any device could be installed economically that would allow for the many different causes of brake failure such as broken drums, worn linings, faulty adjustment, leaky diaphragm, and etc. They also stated that a device creating movement or sound is far superior to a flashing light not seen as easily and quickly. The recently adopted law requiring warning devices for air pressure showing how many pounds of application is given when going downgrade was praised by drivers as a useful addition to truck safety requirements.

Committee Findings

(1) The committee agrees that any device that would lessen the number of accidents should be given consideration. The committee strongly feels, however, that any such device should be thoroughly tested by the California Highway Patrol. Where there is but one patented device in a particular field, the Legislature cannot act officially, no matter the degree of effectiveness of the device. If the device is timely, effective and approved, and made available to the public through normal commercial channels, the committee feels the public will accept the device and/or manufacturers will install it.

(2) The committee feels that no matter how many warning devices there might be in a truck cab, there is always the human factor that might better be handled through education rather than legislation. The committee, while realizing the degree of risk involved in dependence upon some particular device rather than a proper maintenance program, feels that the trucking industry and the California Highway Patrol should engage in co-operative testing and experimentation to determine the efficacy and reliability of such devices.

(4) Proposed Testing and Approval of Tires For Sale in California

With California's developing extensive freeway system and resultant increase in high-speed travel, dependable tires are an important factor in highway safety. Concern has been expressed over the lack of any state regulation or requirement outlining standards to be met

by new tires sold for use on California automobiles. Testing of auto lighting equipment, on the other hand, is done in accordance with Section 26100 of the Vehicle Code at the University of California on S A E standards and specifications developed by the Department of Motor Vehicles. Auto glass is also tested for adequacy and safety factors at private laboratories.

During the committee's August 24, 1960, Sacramento hearing devoted partially to an analysis of the effects of a bill that would prohibit the sale or use of new tires unless of a type approved by the California Highway Patrol (Assembly Bill 1352, Masterson—1959), testimony indicated that there are probably in excess of 1,000 different types of tires produced by manufacturers. It was further stated that extensive testing is carried out by the manufacturers, that all grades and types of tires receive identical safety tests, and that constant improvements are made not only in testing procedures but in tire strength and safety with the hope of developing safe tires within the economic reach of everyone.

It was suggested that the State, in order properly to test types and grades of tires involved, would have to spend approximately 40,000 test days and probably \$25,000 to purchase just one piece of equipment required for testing, a resiliometer.

Committee Findings

While the committee certainly would not want to compare the cost of a possible accident preventive program with the human safety factor, it does feel that a State testing program may not be the solution to the problem suggested by AB 1352.

D. HEARING PROCEDURES ON ADOPTION OF FREEWAY LOCATIONS

Procedures followed by the California Department of Public Works, Division of Highways, in freeway location hearings have, for the most part, been embodied in policy resolutions adopted by the State Highway Commission. These resolutions have been amended several times over the years.

For example, the policy resolution adopted in 1955 did not provide for conferences with local officials or for public hearings until sufficient engineering and economic data had been accumulated to support a tentative conclusion as to the basic plan for the location of the freeway. The 1958 resolution provides for such conferences at the initiation of the studies. Another difference between the two resolutions is the 1958 resolution requirement that consideration of information submitted pursuant to Section 75.5 of the Streets and Highways Code be contained both in the Engineer's report to the commission and at hearings held by the commission.

The currently operative commission freeway location policy resolution directs the Department of Public Works to act in accordance with the following procedures:

- (1) At the initiation of its studies for a freeway, the department shall contact all local governmental bodies and other agencies affected to ascertain their views, and shall contact and consult with technicians and other personnel in those agencies,

(2) The department must call to the local agencies' attention Section 75.5 of the Streets and Highways Code, relating to local community values,

(3) Following accumulation of sufficient data and information, the department must publicize local hearings to discuss plans with all interested groups within the city and county involved, an engineer from another district may be called upon to hold the hearing to attain greater impartiality in extremely controversial situations,

(4) The State Highway Engineer is then directed to submit to the commission a report covering all hearings and their results, including the relationship between all possible locations, all local agency master plans and all information submitted by local agencies relating to community values, the report containing this information must be accompanied by the State Highway Engineer's recommendation for the proposed freeway,

(5) The State Highway Engineer then is directed to notify local agencies of the commission's intention to consider the location of the freeway,

(6) Local agencies may request or the commission itself may call another hearing;

(7) If a hearing is requested, public notice is required and when the hearing is held, all information relating to community values gathered by the State Highway Engineer and by local agencies must be submitted

The process outlined above is followed by commission action adopting the freeway route, and the division subsequently negotiates a freeway agreement with local governmental agencies for alteration of local roads and streets

During this committee's June 28, 1960, San Francisco hearing, where the subject matter of House Resolution 120 (Meyers—1960 1st Ex) was considered, Department of Public Works officials made no claim to perfection in current hearing procedures on adoption of freeway locations. These officials stressed the continuing desire of the department and the Division of Highways to change and improve those procedures with the hope of improving working relationships with local agencies in the controversial subject of freeway location. Weaknesses in current procedures undoubtedly will appear as freeway construction creates additional impact upon local entities and people. The department feels it can more easily correct these weaknesses as they appear if the policy containing the procedures is easily amended and not embodied in statute.

Committee Findings

The committee feels that hearing procedures on adoption of freeway locations should be as flexible as possible while remaining reasonable and equitable, and that enactment of such procedures into statute would not serve the ideal of flexibility nor allow for ready modification at the time future needs arise

The committee notes that the Highway Commission constantly reviews its policy resolutions and the committee feels that this procedure should continue

E. PROPOSED TRANSFER OF THE DRIVER EDUCATION AND DRIVER TRAINING PROGRAM FROM THE DEPARTMENT OF EDUCATION TO THE DEPARTMENT OF MOTOR VEHICLES

California's driver education program started during World War II, and initially was designed to provide organized pre-induction courses on various armed forces driving needs and to train drivers for such civilian needs as school buses and trucks. Courses in these fields were placed in the education system with the belief that adequate driver training could best be done by and was the proper responsibility of teachers. Regular courses were offered by qualified teachers who had additionally received special training in this field.

Today, driver education has become a state educational requirement and has encouraged many California high schools to offer a behind-the-wheel driver training program on a voluntary basis. Of the 528 public high schools offering driver education courses in 1959, 438 (or 83 percent) offered driver training courses. Since 1953 and through the 1958-1959 school year, 1,942,990 pupils had enrolled in the classroom phase and 392,684 students had engaged in the behind-the-wheel phase of the total traffic safety program.

In 1953, the year state financial assistance for the program was authorized, 26,521 students completed the course and in 1959, 96,842 representing an increase of 201 percent. Additionally, there are approximately 3,600 people employed by California school districts to teach driver education and training, and there are over 1,400 dual-controlled automobiles used in these courses, many loaned free of charge by local dealers.

Financial support of the driver education program evolves from Section 17305 of the Education Code, providing \$35 per pupil instructed in driver training, and Section 42050 of the Vehicle Code, providing \$1 for each \$20 of fine imposed (or for each \$20 of forfeited bail) for violation of any Vehicle Code section or city or county ordinance relating to the operation of a motor vehicle except parking and registration offenses.

Responsibility for rules and regulations governing the establishment, conduct and scope of driver education and driver training in California secondary schools is lodged with the Department of Education. House Resolution 170 (Bee—1959) referred to this committee for interim study, and discussed during the November 20, 1959, Los Angeles hearing, related to a suggested transfer in that responsibility to the Department of Motor Vehicles. The majority of witnesses shared the view that since the automobile has become a necessary implement of modern living, and especially so in California with its high percentage of driver miles per population, we must look to the schools for the development of the knowledge, attitudes, habits, and skills necessary if we are to drive our cars and live in relative safety.

Another common view among witnesses at the hearing reflected the fact that the best time to train a driver is when he is young, most receptive and is able to establish good driving habits. It was further suggested that schools are in the best position to provide this vital training to young people, since machinery for handling the program exists within the school department framework and the program is usually integrated with other safety programs.

Most people appearing at the committee hearing echoed the feelings that driver training is an educational subject rather than an occupational orientation, that principles of good teaching are the same whether directed at history, English or driver education, and that driver education and driver training are the responsibility of the public schools. The suggestion that perhaps the driver education phase be handled in the classroom and the driver training phase be handled by the Department of Motor Vehicles was almost unanimously opposed by the belief that it is not educationally sound to separate instruction from supervision in any continuous education process and that both phases be kept together by the responsible agency.

It was further pointed out that the Department of Motor Vehicles at no time had asked for the proposed transfer of the driver education program and that the department probably did not have the facilities, personnel or budget to undertake the job. A constitutional question of using motor vehicle funds for this type of program was also raised.

The following witnesses were represented at the committee hearing, either in person or by letter:

- Keith Ball, Chief, Division of Field Operation, Department of Motor Vehicles
- Dr. John R. Eales, Consultant in Secondary Education, State Department of Education
- Dr. Adolfo de Urzoste, Member, San Francisco Board of Education
- Lawrence L. Knovich, Assistant Professor of Physical Education, Specialist in Teacher Training Programs in Safety Driver Education, Sacramento State College
- Donovan F. Cartwright, Superintendent, Tulare Union High School District, and also representing California Association of Secondary School Administrators
- Richard Kaywood, Chairman, Health and Driver Education Department, Anaheim Union High School
- R. Wayne Lunsure, District Supervisor of Driver Education, Excelsior Union High School District, Los Angeles
- Reg. Lichty, Superintendent, Plumas Unified School District, and also representing California Association of Secondary School Administrators
- Melvin T. Schroeder, Supervisor of Driver Instruction, Los Angeles City School Districts and Vice President, California Driver Education Association
- Cecil G. Zaun, Supervisor in Charge, Safety and Driver Education Instruction Section, Los Angeles City Schools
- Earl Campbell, California Traffic Safety Foundation and California Federation of Safety Councils
- Ralph A. Suppance, Driving School Association of California
- John S. Uhlau, President, California Driver Education Association
- J. M. Smith, President, Farmers Insurance Groups
- J. B. Branch, President, Allstate Insurance Company
- Virgil P. Anderson, Public Relations Department, California State Automobile Association
- Robert J. Cheney, Manager, Public Safety Department, Automobile Club of Southern California
- California Congress of Parents and Teachers

It should be pointed out that all witnesses were in favor of retaining the driver education and driver training program in the Department of Education.

Committee Findings

The committee feels that there was overwhelming rejection by witnesses of the idea of transferring the responsibility for driver education and driver training programs from the Department of Education to the Department of Motor Vehicles. The committee is also aware that the Citizens' Advisory Commission to the Joint Legislative Committee on Higher Education has advocated removing the driver education and driver training programs from the Education Code.

Thus interim committee feels that there is conclusive evidence that driver education for youths of pre-driving age at the high school level is a good thing and should be continued under administrative direction of an agency of state government.

NOTE: The subject of driver education and driver training is also discussed in this committee's report on House Resolution 331, available as a separate document and issued as Vol. 3, No. 7 in this committee's 1959-1961 series.

F. ADVISORY BOARDS**(1) Possible Creation of a Motor Vehicle
Department Advisory Board**

Supporters of the creation of an advisory board to the Director of Motor Vehicles cite the growth of the automotive dealers' industry and the growth of the department in the need for closer liaison between the industry and the director. During the committee's November 19, 1959, Los Angeles hearing, devoted partially to a consideration of the subject matter of Assembly Bill 2539 (DeLotto—1959), testimony showed that there have been very few instances of either a lack of liaison or examples of unfair treatment by the department.

One of the provisions of the bill that would have created a five-member board supported by an appropriation from the Motor Vehicle Board related to a review procedure of disciplinary actions taken against businesses licensed under the Vehicle Code. It was pointed out during the hearing, however, that seemingly adequate appeal and review procedures exist under current law. Another provision of the suggested bill dealt with a review of proposed legislation affecting such businesses; it was pointed out that the Advisory Committee on Motor Vehicle Legislation is currently an effective group operating in this area.

Committee Findings

The committee feels that, although it is commendable that the industry desires an official voice, the imposition of an advisory board upon the Department of Motor Vehicles would result in no rights additional to those already enjoyed by the industry. The committee also feels that the creation of any such board should be supported by the industry and not be included in California statutes.

**(2) Addition of Three Members to the State
Communications Advisory Board**

The State Communications Advisory Board, created in 1947, consists of seven members, including the State Director of Finance, three representatives from state, county and city fire services and three from

those jurisdictions' law enforcement agencies. In 1948, the Division of Highways, three counties and no cities were using highway radio services and in 1960 the Division of Highways, 30 counties and nine cities were using such services

The division has 200 base stations and approximately 1,100 mobile units, counties have 350 base stations and about 2,000 mobile units, and the cities have 15 base stations with 300 mobile units. By 1963, Federal Communications Commission will require that the three levels of government now using police and radio frequencies in California must use separate operations, services and frequencies

The advisory board attempts to improve and co-ordinate the use of radio and other communications owned and operated by all political subdivisions to avoid duplication, interferences and provide for economy of operations, and to establish a service whereby a properly engineered and well-planned communications program may be provided to all public agencies

To do its job in the face of the tremendous increase in services and the adoption of recent federal regulations, the advisory board and several professional associations in California requested the Legislature to add three additional board members, one each to represent state, county and city highway services. The subject matter of the bill proposing these additions, Assembly Bill 2714 (Lowrey—1959), was discussed during this committee's June 30, 1960, hearing in San Francisco

Testimony seemed to indicate that a better operational use of various agency radio systems is advantageous to highway users in case of accident or closure of stretches of roadway, and that co-ordinated communications would increase the efficiency of the co-operating agencies

Committee Findings

The committee feels that while the impact upon motor vehicle transportation by the addition of three members to the Communications Advisory Board will be slight, evidence presented for the justification of the additional personnel to increase efficiency could not be adequately judged

The committee respectfully suggests that if a similar bill is introduced in the 1961 Session, it be referred to a committee more competent to ascertain and judge matters of efficiency in governmental jurisdictions

PART II

REPORTS AND RECOMMENDATIONS OF THE ADVISORY
COMMITTEES TO THE INTERIM COMMITTEE ON
TRANSPORTATION AND COMMERCE

A. Preliminary Report of the Advisory Committee on
Farm Vehicle Registration Problems

ALAN G. ANDERSON, Chairman

October 27, 1960

*Honorable L. M. Backstrand, Chairman
Assembly Interim Committee on Transportation and Commerce
State Capitol, Sacramento, California*

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: Since its appointment in August 1960, your Advisory Committee on the Farm Vehicle Registration Problem has held two meetings—one in Sacramento on September 7 and one in Los Angeles on October 3. We are pleased to submit to you a preliminary report on the progress of the committee. As there are yet some unanswered questions which the committee is exploring, it is not possible to present you with a final report and recommendations at this time.

Studies and discussion of the problem have brought forth tentative agreement among the members that, as a matter of principle, the following policies should guide the committee in consideration of final recommendations:

1. Fee Exempt

Equipment used in production and harvesting of agricultural products and used exclusively in agricultural operations.

Examples:

Tractors	Loaders
Plows	Harvesters
Discs	Pickers
Spray rigs	Balers

2. Identification Plate—Permanent

Trailers or semitrailers used exclusively in transporting implements of husbandry and tools used exclusively for the production or harvesting of agricultural products and livestock, including the loading thereof.

Consideration would be given to recommending a permanent identification plate, at a fixed minimum fee, which plate would be valid until change of ownership occurred.

3. Identification Plate—Renewable

Trailers and semitrailers owned and operated exclusively by a farmer used in off-highway operations and used only incidentally

to transport agricultural products upon the highway to the point of first handling. Consideration would be given to recommending identical fee treatment to that now provided for cotton trailers.

Recognizing the need to place some limitations upon vehicles coming under Category No. 3, above, your advisory committee is investigating further the feasibility of accomplishing this by means of a gross weight restriction. Information is now being obtained concerning the weight features of the several different types of vehicles used by farmers which would fall within this category and which could logically be entitled to this type of identification plate.

With the excellent progress made up to this point, your advisory committee is hopeful that the assignment given them can be concluded with one more meeting and a final report and recommendations submitted to you prior to January 1, 1961.

Respectfully submitted,

(Signed)

ALAN G. ANDERSON, Chairman

By: ROBERT E. HANLEY, Secretary

Members of the Advisory Committee

Honorable Myron Frew, Member of the Assembly

Honorable Tom Bane, Member of the Assembly

Captain Harold K. Jacobs, California Highway Patrol

Mr. A. J. Veglia, Department of Motor Vehicles

Mr. Richard Johnsen, Jr., Agricultural Council of California

Mr. Alan G. Anderson, Private Truck Owners Bureau

Mr. Robert E. Hanley, California Farm Bureau Federation

B. Report of the Citizens' Advisory Committee on Transportation of Flammable and Corrosive Liquids

W. R. Goss, Chairman

August 25, 1960

The Honorable L. M. Backstrand

*Chairman, Assembly Committee on Transportation and Commerce
State Capitol, Sacramento, California*

DEAR MR. BACKSTRAND: The Advisory Committee on the Transportation of Flammable and Corrosive Liquids has had a number of meetings and herewith submits an interim report of its findings and recommendations.

The purpose of any legislation which may be adopted pursuant to the recommendations of the Advisory Committee, is to promote the uniform enforcement of law and to minimize the dangers to life and property incident to the transportation of flammable and corrosive liquids, and flammable compressed gases, by highway motor vehicles engaged in interstate or intrastate commerce. Further, it is intended in the legislation that the state pre-empt certain areas of the regulations for vehicles transporting such products or commodities, as may be contained in state law or administrative regulations.

Due to provisions of the Public Utilities Act, PUC General Order 99 should be amended to provide identical, or substantially identical, regulations.

It is anticipated that applicable provisions of the law should be placed in the Health and Safety Code, while other provisions should be placed in the California Motor Vehicle Code.

The committee recommends that it be allowed to continue its advisory capacity to your committee in order to more adequately complete its study and findings. The following is the substance of the conclusions reached at a meeting of the entire committee, held in Los Angeles on August 5, 1960. The following items are suggested for possible inclusion in the Health and Safety Code.

1. An enabling act be adopted providing that the State Fire Marshal adopt rules and regulations, in accordance with the Administrative Procedure Act, covering the design, construction, capacity and nonhighway operation of tank vehicles, for flammable and corrosive liquids; such enabling act to designate the State Fire Marshal as the enforcing agent for the construction and nonhighway operation of tank vehicles, with provisions for local enforcement as is now done with Title 19 of the C A C.
2. As a guide line for the adoption of such rules and regulations the following points were agreed upon:
 - (a) National Fire Protection Association Standard No. 385 be used for the construction of tank vehicles for flammable liquids, with certain modifications therein, and with further provisions for skin stressed monocoque (frameless) design.
 - (b) The manufacturer of tank vehicles be certified by the State Fire Marshal to construct such vehicles in conformance with the adopted regulations. Manufacturer would then certify that each vehicle conforms to the regulations by applying a metal plate to the vehicle or tank, for example.
 - (c) Specific provisions should be developed for "clean bore" design. It is recommended that I C C minimums be used.
 - (d) I C C specifications MC 310 and MC 311 be used for constructing vehicles transporting corrosive liquids.
 - (e) A permit be required to operate such tank vehicles, and an annual inspection be mandatory in order to maintain such permit.
3. That definitions be adopted defining "flammable liquid" (as defined in Section 355 of the Motor Vehicle Code); "flammable compressed gas" as defined in Section 73 300 Tariff No. 10, I C C. regulations, and the words "tank truck, tank vehicle, tank trailer and tank semi-trailer" in words similar to that in NFPA 385.
4. Transportation of incompatible materials is now outlined in the Code of Federal Regulations, Chart 77 848.
5. A suitable system of marking vehicles which are transporting flammable or corrosive liquids, which may also be toxic and/or unstable.

The following items are recommended for inclusion in the Motor Vehicle Code, with enforcement being in the hands of the Highway Patrol and local police departments, the Department of Motor Vehicles, and in some cases with provisions for other local enforcement:

- 1 The adoption of driver qualifications, such as contained in Part 7 of General Order 99 of the California Public Utilities Commission
- 2 That in addition to the regular examination for either a chauffeur's or an endorsed operator's license, there shall be a further examination of drivers intending to operate vehicles transporting flammable and corrosive liquids, and flammable compressed gases
 - (a) Such examination shall include the driver's knowledge of the hazards to life and property relating to the product being transported
 - (b) The safeguards to be taken in case of accident
- 3 The routing of such tank trucks, and the use of the streets and highways throughout the State
- 4 Provisions requiring a manifest, memorandum receipt, bill-of-lading, shipping order, or other document describing the type of commodity being transported and its quantity at the time of shipment, be in the possession of the driver during the course of such transportation.
5. A uniform requirement covering the marking of tank vehicles with the word "FLAMMABLE" and other related markings
- 6 Provision for the attachment of tank, barrel, drum, or cylinder not designed to be permanently attached to a vehicle
- 7 Provisions covering procedures for disabled vehicles or broken or leaking packages; and the provisions necessary when a flammable liquid tank vehicle is involved in an accident

W R Goss
Chairman, Advisory Committee on
Flammable and Corrosive Liquids

Members Advisory Committee on the Transportation of Flammables and Corrosive Liquids

William R Goss, Chairman, Deputy Fire Chief, City of Los Angeles
Chief Raymond M Hill, Fire Prevention Bureau, Los Angeles Fire
Department
L S Chapple, Jr, Western Oil and Gas Association
B E Rogers, Richfield Oil Corporation
Bert Trask, California Trucking Association
Tom Knight, Jr, California Manufacturers Association
L S Durrell, Industrial Steel Corporation
Charlie Sands, Interstate Commerce Commission
Alan G Anderson, Private Truck Owners Bureau of California
T E Rogers, Public Utilities Commission
Captain H. K. Jacobs, California Highway Patrol
Jay Michael, League of California Cities
Vern Cannon, California Teamsters Legislative Counsel

C. Report of the Special Subcommittee on Authorized Emergency Vehicles of the Advisory Committee on Motor Vehicle Legislation

Alan G. Anderson, Chairman

November 29, 1960

*The Honorable L. M. Backstrand**Chairman, Assembly Interim Committee**on Transportation and Commerce,**State Capitol, Sacramento, California*

DEAR MR BACKSTRAND: The Advisory Committee on Motor Vehicle Legislation upon your request of August 8, 1960, was asked to assist the Assembly Interim Committee on Transportation and Commerce in the formulation of a program relating to the classification, use and operation of authorized emergency vehicles. Subsequent to the request of the interim committee a special subcommittee of the Advisory Committee on Motor Vehicle Legislation was appointed.

The committee reviewed Assembly Bill 2540 of the 1959 Session, which has been referred to the interim committee and devoted considerable time to the general problems involving the operation of authorized emergency vehicles of law enforcement agencies, life saving agencies and the fire service. It being the consensus of the committee that the definitions of authorized emergency vehicles should include only the basic emergency services, the committee, being composed of qualified persons and familiar for a number of years with problems involved in the classification of such vehicles and constant attempts to expand the emergency vehicle status to other than the vehicles providing basic emergency services, recommends the following program:

1. Redefine authorized emergency vehicles to include within this definition only those vehicles used in the basic services: police, fire and life saving
2. Permit the commissioner of the California Highway Patrol to issue emergency vehicle permits to other vehicles upon a showing that the services provided by these vehicles are necessary to the public health and safety
3. Require the commissioner of the California Highway Patrol to test and approve required or permitted red or amber warning lights to be mounted upon vehicles and sirens
4. Permit only the use upon vehicles of approved required or permitted warning lights after a certain date
5. Permit installation of required or permitted warning lights upon vehicles but only in accordance with mounting instructions issued by the Commissioner of the California Highway Patrol.
6. Add a section to the Vehicle Code providing that the driver of any vehicle approaching a vehicle displaying a flashing amber warning light shall reduce speed and proceed past the vehicle only with caution.
7. Add a section to the Vehicle Code providing that the driver of any vehicle approaching a vehicle displaying a flashing or steady burning red warning light shall stop and remain stopped until he has determined that he can proceed with safety

- 8 Revision of applicable sections of Vehicle Code to permit certain vehicles to display flashing amber warning lights instead of the presently required red warning light

Testimony before the interim committee and the findings of members of the advisory committee indicate the plan as set forth above is necessary for the safety and general welfare of the citizens of the State of California and for operators of emergency vehicles

The Advisory Committee on Motor Vehicle Legislation in presenting these recommendations has been glad to assist the interim committee.

Sincerely,

(Signed) ALAN G. ANDERSON
Chairman, Technical Subcommittee

Members of the Subcommittee

Mr. Alan G. Anderson, Chairman
Mr. Virgil Anderson, California State Auto Association
Mr. E. L. Albrecht, Sr., California State Fireman's Association, Inc.
Mr. Frank Baxter, Division of Highways
Inspector Owen Held, Los Angeles Fire Department
Captain Harold K. Jacobs, California Highway Patrol
Mr. G. P. Larsen, Private Truck Owners Bureau of California
Mr. Earl Sorenson, Division of Highways
Chief Harold W. Sullivan, Los Angeles Police Department
Mr. Clifford Woodrell, Pacific Telephone & Telegraph
Mr. Roland Worthy, Automobile Club of Southern California

**D. Statement Submitted by the Advisory Committee on
Motor Vehicle Legislation**

WILLIAM B. CLEVES, Chairman
VIRGIL P. ANDERSON, Secretary

November 1, 1960

*The Honorable L. M. Backstrand
Chairman, Assembly Interim Committee
on Transportation and Commerce,
State Capitol, Sacramento, California*

DEAR MR. BACKSTRAND. The Advisory Committee on Motor Vehicle Legislation sincerely appreciates this opportunity to file with the Assembly Interim Committee on Transportation and Commerce, a report of its activities and studies on motor vehicle legislation prior to the 1961 Regular Session of the California State Legislature.

For informational purposes we have set forth in this report, a brief resume of the history of the advisory committee. This also includes an outline of advisory committee procedures and policy in connection with its endeavors to be of assistance in formulating legislation for the safe and orderly operation of vehicles on the streets and highways of California.

It is indeed a pleasure to have the opportunity to submit the attached report for the consideration of your interim committee.

Sincerely,

WILLIAM B. CLEVES, *Chairman*
VIRGIL P. ANDERSON, *Secretary*

Advisory Committee on Motor Vehicle Legislation

The Advisory Committee on Motor Vehicle Legislation consists of representatives of organizations interested in all phases of the motor vehicle industry and the safe and orderly use of the streets and highways of our State. At the present time it consists of representatives from 86 organizations representing a statewide interest or broad geographical area. In addition, it also has representatives from nine agencies of the state government who actively participate in all of its functions.

The Advisory Committee on Motor Vehicle Legislation traces its origin from a group which was initially organized and known as the Motor Vehicle Conference. This parent organization participated in studies on many of the problems confronting the early day motorist in California and worked with various members of the State Legislature in formulating and developing laws covering the registration and licensing of motor vehicles as well as the development of the various rules of the road. It was composed of representatives of various organizations such as the Agricultural Legislative Committee, the Automobile Club of Southern California, the California Peace Officers Association, the California State Automobile Association, the County Supervisors Association, the Los Angeles Motor Car Dealers Association, the State Federation of Farm Bureaus, and such state agencies as the Division of Motor Vehicles and the Legislative Counsel Bureau.

The California Legislature, during the 1931 Regular Session created a joint committee consisting of five members—three from the California State Senate and two from the State Assembly. The resolution creating this joint committee charged it with the responsibility of studying motor vehicle laws then in effect and to thereafter return to the Legislature with recommendations on consolidation and improvements that it deemed necessary and proper. In addition the resolution creating this joint committee also provided for the appointment of an advisory committee to include representatives of various agencies, official and unofficial, concerned with motor vehicle legislation.

Early in 1932, the Advisory Committee on Motor Vehicle Legislation was organized and established by this legislative interim committee. Organizational procedures established at that time also provided for an elected chairman, vice chairman and secretary. Following its establishment, the advisory committee assisted the legislative interim committee in a multitude of tasks assigned to them for study. The initial major accomplishment was the assistance rendered to the legislative interim committee in the preparation of a report which, among other things, advocated a recodification of the vehicle laws as well as certain substantive changes in the laws themselves.

Thereafter the Legislative Counsel Bureau and a drafting committee of the advisory committee prepared the text of the proposed new code which ultimately led to the introduction of a California Code Commission draft in the 1935 Session. This proposed draft was, as a matter of course, enacted into law and became Chapter 27, Statutes of 1935.

Since that time, the Advisory Committee on Motor Vehicle Legislation has continued as a voluntary association of representatives of the motor vehicle industry dedicated to these early established principles

of being of assistance to the Legislators of both houses in research and development of legislation pertaining to motor vehicle transportation and the motor vehicle industry

Organization of the advisory committee has remained substantially the same over these nearly three decades. It is a loosely knit organization, having but three officers the same as when started—namely, a chairman, vice chairman and a secretary. Generally, meetings are held during the interim period between sessions of the Legislature. The advisory committee has endeavored to retain its function as a forum to which proposals are submitted for study.

In order to facilitate studies of the various proposals submitted, the advisory committee has established four regular standing subcommittees as follows:

- No. 1 *Registration*—This subcommittee reviews all matters relating to registration of vehicles, certificates of title, dealer's licensing, auto wreckers, taxes and reciprocity.
- No. 2 *Drivers' Licenses and Financial Responsibility*—This subcommittee considers all matters relating to operators' and chauffeurs' licenses, as well as security and financial responsibility laws.
- No. 3 *Rules of the Road and Procedures*—This subcommittee considers all proposals on traffic laws as set forth in Division 11 of the Vehicle Code, procedures in Division 17 and penalties, fines and forfeitures covered in Division 18 of the Vehicle Code.
- No. 4 *Technical*—This subcommittee considers all matters relating to equipment and the size, weight and loading of vehicles as set forth in Divisions 12, 13, 14 and 15 of the Vehicle Code.

In addition to the regular standing subcommittees, a drafting subcommittee is also maintained on a permanent basis. All proposals approved by the advisory committee are referred to this body for the purpose of finalizing a proper draft to be considered by the Legislature.

On many occasions, special subcommittees have been established for the purpose of studying special or unique problems arising in the field of motor vehicle transportation. One such special subcommittee that was formed in 1958 and is maintained on a continuing basis at the present time is the Special Subcommittee on Smog.

Created for the purpose of researching and collectively studying the problem of air pollution and the contribution made by the internal combustion engine used in the present day motor vehicle, this special subcommittee held a series of meetings giving detailed consideration to the many complexities involved. With the able assistance of scientists and technicians who assisted the advisory committee in their research, recommendations were made which it is hoped will help in this pioneering effort to clear up the air we breathe.

It is to be expected, as in any new field of law and regulation that additional problems will arise. As a result, the Special Smog Subcommittee is being retained on a continuing basis to assist in studies on air pollution that will achieve the desired objectives without imposing harsh and undue restrictions on the motoring public.

With respect to proposals considered by the advisory committee, it should be pointed out that they originate in many ways. A goodly number are submitted by individuals. Many, of course, are submitted by participating organizations and another large group originate within various agencies of the state government.

Although the committee itself is composed of regularly designated representatives of the member organizations and agencies, it has always fostered and encouraged submission of any proposal relating to the motor vehicle industry and each proponent is given every opportunity for an adequate hearing to explain the merits of his proposal before the committee. It should be stated that whatever action is taken by the full committee on the approval or disapproval of any individual proposal, the proponent, of course, may properly seek its passage through legislative processes. In that event, it is also perfectly proper for advisory committee representatives to appear before any legislative committee considering the same and to testify, as a matter of record, on the action previously taken in the considerations of the advisory committee.

Lastly, it should be stated that the studies and deliberations of the advisory committee are always undertaken in an atmosphere of rendering a service in the development of legislation relating to the safe and orderly use of motor vehicles upon the highways of our State. Because of the broad and varied representation on the committee, it is the desired objective that these studies produce a properly balanced program worthy of consideration by the Legislature in their wisdom.

Advisory Committee Studies Prior to 1961 Regular Legislative Session

The Advisory Committee on Motor Vehicle Legislation held two meetings during 1960. Another meeting was tentatively scheduled to be held during the early part of December, 1960. In all probability an additional meeting will be necessary during the month of January, 1961, in order to conclude its studies on the proposals that have been submitted.

Up to November 1, 108 proposals were submitted to the committee for its study. Of these, 63 received approval, 10 were disapproved, 18 were withdrawn by their proponents, 8 were held over for further explanation or consideration and no action was taken on the remaining 9. In addition, a substantial number was submitted for inclusion on the agenda for the next regularly scheduled meeting and it was expected that additional proposals may also be submitted prior to that time.

The subject matter of authorized emergency vehicles was an item given considerable study by the advisory committee during this period. The technical subcommittee at the request of Chairman Backstrand of the Assembly Interim Committee on Transportation and Commerce had been requested to review present provisions of the Vehicle Code relating to authorized emergency vehicles.

Need for this study stemmed from the many classifications of authorized emergency vehicles that have been set forth in the provisions of the Vehicle Code. Having as its objective the desirability of increasing the effectiveness of the use of sirens and red lights in use

by police, fire, ambulance and life-saving vehicles, the advisory committee worked in conjunction with the legislative committee in the preparation of a proposed revision of these provisions in the Vehicle Code. A draft has been prepared which will endeavor to give more effective public recognition to the display of warning lights on these vehicles. It is also hoped that this proposed legislation will return the original philosophy on the meaning of red and amber lights for the guidance of the motoring public. This will, of course, result in the curtailment of certain vehicles from having the privilege of an authorized emergency vehicle status.

As is only natural, the question of providing proper laws governing the movement of traffic upon the streets and highways of our State continues to receive a great deal of consideration by law enforcement agencies, traffic engineers, safety organizations and generally, the public as a whole. Numerous suggestions have been made to add to, amend or clarify present rules of the road which are outlined in Division 11 of the Vehicle Code. It is believed that the membership of the advisory committee is particularly well qualified to consider this broad general subject in view of the diversified background of the members of the committee consisting as they do of traffic engineers, traffic law officials, representatives of organized motorists and representatives of the various agencies of the state government who are primarily concerned with the use and operation of motor vehicles. All proposals are thoroughly discussed and considered to foster any changes in these laws on a well-balanced basis.

Proposals have been approved clarifying the law on such subjects as erection and maintenance of proper signs and signals, special stop requirements for vehicles approaching railway grade crossings, local regulation on removal of vehicles and stopping requirements for motorcycles among others. One of the most serious of matters studied was that on the subject of drunk drivers. Scientific tests for intoxication administered by qualified persons has been uniformly recognized as being scientifically accurate in determining intoxication. In order to further control the dangers inherent in drinking drivers using our highways, the advisory committee recognized the desirability of establishing into law, presumptions as to the intoxication of any person arrested while operating a motor vehicle and found to have an alcoholic bodily fluid content evidencing intoxication as established by recognized medical standards. A proposal will be submitted by the advisory committee to establish these presumptions into law with the objective of promoting the safer operation of motor vehicles upon our highways and to relieve the traveling public from the dangers of the drinking driver.

Another problem considered was that of the enforcement of weight limits on commercial vehicles. Presently enforcement officers may require the driver of an overloaded vehicle to remove a portion of the load so as to render it safe within the limits permitted. Because of the fact that unloading could not always be accomplished with safety, an amendment has been prepared to this code section to give the officer discretionary authority to prohibit further movement of the overloaded vehicle until a permit has been obtained from the Department of Public Works as is presently authorized under Vehicle Code Section 35780.

One of the primary areas of confusion in connection with the operation of traffic enforcement vehicles and other authorized emergency vehicles has been the provision exempting emergency vehicles from certain provisions of the Rules of the Road as set forth in Division 11 of the Vehicle Code. Because of the innumerable exceptions and many separate sections listed, an intolerable problem was created for the individual officer in attempting to determine just what his exemptions actually were. A clarifying draft to expedite understanding of the exemptions granted under this code will be submitted for the purpose of clarifying this section.

Because of the rapidly accelerated growth of vehicle usage in California, many other problems have arisen in connection with the operation of motor vehicles throughout the State. Special problems which have been presented and which we feel have been solved by the action of the Advisory Committee on Motor Vehicle Legislation are as follows.

One such example concerns Section 21451 of the Vehicle Code which permits vehicles to proceed through or to make a right or left turn at an intersection controlled by an official traffic control signal when a green or go sign is exhibited except in cases where vehicles or pedestrians are lawfully within the intersections or crosswalks. Local interpretation of this section had extended the definition of intersection to include adjacent crosswalks which are sometimes 25 to 30 feet back from the legal "entrance" to the intersection. Appropriate drafts to correct this situation will be presented to the Legislature. Additionally, it has been discovered that the failure of the Vehicle Code to properly distinguish the terms "roadway" and "highway" in various provisions of the Rules of the Road had created interpretation problems that were apparently at variance with the original intent of certain provisions as set forth in the Vehicle Code. In order to obtain uniformity in interpretation of these terms, appropriate corrections have been made to these sections of the Code to be presented to the Legislature.

Another problem considered by the advisory committee was that concerning passengers riding on open vehicles such as trucks or station wagons wherein such passengers have on occasion been found riding in extremely hazardous positions with legs hanging over the tailgate or on trucks without sidegates with legs hanging over the left side. At present, these actions are not in violation of any provisions in the Vehicle Code. A draft of proposed legislation will be submitted to the Legislature in order to eliminate the dangerous practice. It had also been found that although California's Vehicle Code presently contains a section prohibiting a person from standing in a roadway for the purpose of soliciting a ride, no control is present in the case of vendors or other persons standing in the street and soliciting employment or business from the driver of any vehicle. A solution to this problem in the form of proposed legislation will also be submitted by the advisory committee.

For a great number of years the Advisory Committee on Motor Vehicle Legislation has participated in a study of speed regulation. From time to time, proposals have been submitted to the Legislature for its consideration outlining the thinking of the advisory committee

on changes in our speed laws which were felt to be necessary in order to secure proper control over the speed of our motor vehicle traffic and at the same time without becoming unduly restrictive and without taking away any of the desirable features of mobility which the motor vehicle has brought to our people. In this connection, a proposal will be submitted to the Legislature this year for its consideration recommending an increase in the speed limit for vehicles towing trailers. The advisory committee has concluded that this is most desirable in order to gain more uniformity in speed limits for the various classes of vehicles using the highway and commensurate with sound safety practices.

The motor vehicle industry itself is in a continual process of developing new equipment, lights, signals, and other safety features on their products. As a result, the advisory committee has always endeavored to keep abreast of such developments and to provide amendments and clarifications of the code for the proper use of this newly developed equipment. Proposals which have been studied and drafted by the advisory committee will be submitted to the Legislature for the various purposes of clarification and authorization of the use of this new equipment.

One of the most important problems confronting this State from year to year is that of traffic accidents. Numerous proposals have been made to solve this accident problem through the technique of law enforcement. The advisory committee most certainly recognized that there is always a minority of motor vehicle operators that must be controlled through proper enforcement. Every effort should be made to insure that the safe driver be given every assistance in the promoting of law enforcement that will make the highways safe for his use.

Additionally it should be stated that California is recognized as one of the leaders in solving the traffic accident problem through education. The advisory committee through a special subcommittee is studying the question of age limits for operators of motor vehicles. Involved in this study is the question as to whether the age limits for operators should be increased unless the applicant has completed a course in driver education and driver training or has otherwise completed a course in driver training from a private driving school. It is hoped that from this study a recommendation may be offered to the Legislature at the beginning of the 1961 Regular Session of the Legislature.

Over the many years serious problems have been incurred with the proper regulation of mufflers and exhaust noises. Even as recently as 1956, the advisory committee participated in a study at that time made by the Assembly Interim Committee on Transportation and Commerce. Noise measurement evaluation scales in use at that time were reported to be impractical. The Advisory Committee on Motor Vehicle Legislation, nevertheless, intends to continue with its research on the problem. At the present time the technical subcommittee has been delegated the task of studying the problem. They will endeavor to obtain the assistance of technicians in this field and plan on consulting with interested legislators.

Lastly, the Advisory Committee on Motor Vehicle Legislation has accorded full recognition to House Resolution 381 (1959 Regular Session). The Assembly Interim Committee on Transportation and Commerce has pioneered in a study of Ownership, Operation and Use of

Motor Vehicles in an effort to review and analyze the functions of law and to safeguard and facilitate the operations of our rapidly growing highway transportation system. The advisory committee and its representatives have made every effort to keep abreast of and to encourage the objective analysis presently undertaken by this Assembly committee.

Reviewing the functions of state government bearing on ownership, operation and use of motor vehicles and analyzing it piece by piece will prepare and equip our State for the tremendous job ahead in regulating expected traffic which undoubtedly will be greatly increased within the next 20 years. The advisory committee recognized that this review bolstered by available factual data will render a service to legislators not only in the present, but in the future who want to deal with problems in this field. Ultimately it must lead to better services and protection for the public. The Advisory Committee on Motor Vehicle Legislation at their most recent meeting recommended by a unanimous vote that the advisory committee go on record as recommending that the Legislature during the 1961 Regular Session adopt a resolution calling for the continuation of the Assembly interim committee's three-phase study on the ownership, operation and use of motor vehicles as embodied in the provisions of House Resolution 381 (1959 Regular Session).

The advisory committee will, it is hoped, complete studies and review the many proposals which have been submitted to it and are expected for the following meetings and it is its desire that they be presented in time to the proper legislative committees of the Legislature with recommendations in draft form.

Our sincere appreciation is expressed to the members of the Legislature who have invited the Advisory Committee on Motor Vehicle Legislation to submit this report of its activities.

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ASSEMBLY INTERIM COMMITTEE REPORTS

1959-1961

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NUMBER 7

FINAL REPORT
ASSEMBLY INTERIM COMMITTEE
ON FISH AND GAME

MEMBERS OF COMMITTEE

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OF THE STATE OF CALIFORNIA
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HON. WILLIAM A. MUNNELL
Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore
HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON FISH AND GAME
SACRAMENTO, CALIFORNIA, January 2, 1961

THE HONORABLE RALPH M BROWN,
Speaker of the Assembly,
Members of the Assembly
Assembly Chamber, Sacramento

DEAR SIR This report of the Assembly Interim Committee on Fish and Game contains findings and recommendations and the substantiating material on which those findings and recommendations are based on the subject matter assigned to this committee for study during the 1959-60 interim

The pro forma bills submitted herewith will be presented as committee bills in the 1961 General Session.

Respectfully submitted,

PAULINE L. DAVIS, *Chairman*
Assembly Interim Committee
on Fish and Game

FINDINGS

1 Support of the Department of Fish and Game primarily obtains from the sale of hunting and fishing licenses and subventions from the federal government

Immediately prior to the 1957 Session the revenues from the sale of fishing and hunting licenses declined to the point that the Fish and Game Preservation Fund was going into the red. As a result, the Legislature increased the license fees, but in doing so required (through enactment of Fish and Game Code Section 13005) that 50 percent of all revenue attributable to the increase in license fees established by the 1957 Legislature shall not be made available for expenditure unless they are specifically appropriated by the Legislature. As of October 6, 1960, \$4,254,186 had been collected as that amount representing 50 percent of the sum attributed to the license fee increase. The State Controller's records indicate that only \$100,000 of that sum has been specifically appropriated for expenditure, leaving a balance of \$4,154,186.

These funds are often referred to as "frozen funds" which is misleading. All of the monies collected, including the so-called "frozen funds," are deposited in the Fish and Game Preservation Fund from which the support and capital outlay appropriations for the Department of Fish and Game are made. In reality, these funds constitute only a working reserve upon which the Department of Fish and Game may draw when expected revenues fail to materialize, and it becomes necessary for the department to use them to meet current budgeted expenses. Additionally, this accumulation makes available for immediate expenses that portion of the department's income which would otherwise be designated as an operating reserve.

It is being demonstrated that the increased fee structure has not developed sufficient income to permit the Department of Fish and Game to continue the program level it desires. In an attempt to keep from spending more than its revenue, the department has made and is making adjustments within its program structure to allow for the unexpected decline in revenue.

During the last 18 months, the trend in license sales has been downward, which indicates that additional scrutiny must be given to the programs of the Department of Fish and Game or they will be faced with another license fee increase.

The subventions from the federal government are granted under provisions of the "Federal Aid in Wildlife Restoration Act" which is more popularly known as the Pittman-Robertson Act and the "Federal Aid in Fish Restoration Act," known as the Dingell-Johnson Act.

The Pittman-Robertson Program is supported to the extent of 75 percent by the federal government and 25 percent by the State. The program consists of the management of waterfowl areas and deer ranges as well as conducting studies and investigations concerning food habits.

the effect of brush removal on game ranges, wildlife diseases, big game and the effect of economic poisons on wildlife. The Dingell-Johnson Act provides the federal authority to finance 75 percent of a program of fisheries management in co-operation with the state governments. The State's share is 25 percent as is the case for game management. The program includes such projects as stream and lake improvement and studies concerning various fish and their management.

Individual projects in both programs are basically recommended by the Department of Fish and Game. The type, purpose and duration of the project must then be approved by federal authorities before the department can proceed. The department cannot use these projects as substitutes for work that it might otherwise do as its own program at full state expense.

2 The committee undertook a brief study of the fish and game license procedure which tentatively indicated that the present system of using stamps to validate the licenses is unsatisfactory, particularly in the opinion of the license agents. But, the committee was unable to obtain any material expression from the license-buying public as to the criticisms they may have of the licensing procedures. In view of this, it is our finding that additional investigation in this area is in order.

3 Judicial interpretation of the Fish and Game Code does not require the licensee to have the license in his possession when he is fishing or hunting. This creates a substantial law enforcement problem for the fish and game warden. To enforce the licensing requirements, the warden is compelled to undertake a great deal of follow-up work in ascertaining whether the person observed fishing or hunting was actually licensed as required by law. Interrogations made of the warden force reveal that they wholly subscribe to the requirement that the fisherman and hunter have his valid license in his immediate possession when fishing or hunting. The committee further found that if this provision were precisely stated in the Fish and Game Code, the effectiveness of the game warden force would be materially enhanced, thereby accruing an actual savings to the Fish and Game Preservation Fund.

4 The committee undertook a field trip to investigate the matter of establishing a uniform season from September 1 to December 31 for the taking of sardines to be used in a reduction plant rather than the present season of September 1 to December 31 in designated districts and from August 1 to December 31 elsewhere, which is the subject of A B 21. The field trip gave the committee an opportunity to observe that the problem involved here extends into the jurisdiction of the federal government, encompassing problems that are beyond the control of the California Legislature.

5 Field trips were conducted by the committee into the matter of the taking of abalone in the Districts 7 and 10 waters not less than 30 feet in depth and at least 50 feet from the mean low tide mark which is the subject of A B 826. It was apparent that this problem will require extensive field research, employing personnel and equipment not available to the committee to do an adequate job of obtaining background material.

6. The proposal of A B. 1818 involving the fixing of amounts of sardine catches that may be used for reduction purposes was considered during field trips of the committee. It was found that this matter involves many highly technical considerations requiring extensive field study employing personnel and equipment not readily available to the committee.

7. Field trips were conducted relative to the matter of using trawl nets in waters not less than three nautical miles from the nearest point of land on the mainland shore, which is the subject of A B. 1923. The committee found that the problems involved extend into the jurisdiction of the federal government, encompassing problems that are beyond the control of the California Legislature.

8. Field trips were conducted into the matter of possessing and using trawl nets or dragnets from September 1 through April 31 in District 19, not less than two nautical miles from the nearest point of land on the mainland shore and north of a line drawn east and west through Point Hueneme which is the subject of A B. 1924. The committee found that the problems encountered here also extend into the jurisdiction of the federal government.

9. The committee studied the matter of authorizing the Fish and Game Commission to prescribe regulations under which fish contests conducted in waters of the Pacific Ocean must be administered in order to be exempt from any prohibition against giving a prize or inducement for the taking of fish as envisioned by A B. 1977. Due to the additional workload that this may cast upon the Department of Fish and Game, which as previously stated is in financial straits, additional investigation is advisable.

10. In the matter of providing fish and game and recreational enhancement features in water projects at the time they are constructed, the committee made the following findings:

- a. There was exceptionally strong support from sportsmen, labor, agriculture and local government to incorporate enhancement features in any and all water projects as a nonreimbursable cost at the time the project is initially constructed.
- b. The cost of developing enhancement features after the initial construction of a water project is very high.
- c. Statutes governing the construction of water projects now exclude mandatory consideration of fish and game and recreational enhancement features in facilities to be constructed by the State government.
- d. There is a need for providing funds for the purpose of planning and constructing fish and game and recreational facility enhancement features in the construction of water projects.

RECOMMENDATIONS

1 That the Fish and Game Code be amended to provide that any person licensed under the provisions of the Fish and Game Code shall have the license issued to him in his immediate possession at all times when engaged in any activity that requires a license issued under the provisions of the Fish and Game Code and when so engaged, shall display the license issued to him upon demand of any peace officer enforcing the provisions of the Fish and Game Code. Any violation of this provision should be reasonable cause for a peace officer enforcing the provisions of the Fish and Game Code to issue the violator a notice to appear before the appropriate court. However, any charge under such a provision should be dismissed when the person charged produces in court a license duly issued to such person under the provisions of the Fish and Game Code which is valid at the time of his arrest, except that upon a third or subsequent charge under such a provision, the court in its discretion may take other action.

2. That the federal congress be memorialized to conduct appropriate investigations into the problems facing the Pacific Coast commercial fishery.

3 That an addition be made to Chapter 10, commencing at Section 11900, Part 3 of Division 6 of the Water Code and that Section 6816 of the Public Resources Code be amended relating to payment of costs of water projects attributable to fish and wildlife and recreation and making an appropriation therefor.

4. That the Fish and Game Code be amended to provide that the State of California be specifically required to provide for the preservation of fishlife in the same manner as other owners of dams and conduits

PROPOSED LEGISLATION

An act to add Section 1061 to the Fish and Game Code, relating to licenses.

The people of the State of California do enact as follows:

SECTION 1 Section 1061 is added to the Fish and Game Code, to read:

1061 Every person shall have in his immediate possession any required license, and license stamps or tags, when required, while hunting or fishing.

On arrest for violation of this section, the person may be issued a notice to appear in court and if at such appearance the person produces a valid fishing or hunting license, and stamps or tags when required, authorizing the activity engaged in at the time of the arrest, and the court finds it was duly issued to him and valid at the time of the arrest but not in his immediate possession, the court shall dismiss charges under this section, unless the court finds the arrest is the person's third or subsequent arrest for violation of this section. If the arrest is the third or subsequent arrest the court may either dismiss the action or proceed under the charges

An act to add Chapter 10 (commencing at Section 11900) to Part 3 of Division 6 of the Water Code, and to amend Section 6816 of the Public Resources Code, relating to payment of costs of water projects attributable to fish and wildlife and recreation, and making an appropriation therefor.

The people of the State of California do enact as follows:

SECTION 1. Chapter 10 (commencing at Section 11900) is added to Part 3 of Division 6 of the Water Code, to read

CHAPTER 10 REIMBURSEMENT OF COSTS ATTRIBUTABLE TO FISH AND WILDLIFE AND RECREATION

Article 1 State Policy

11900 The Legislature finds and declares it to be necessary for the general public health and welfare that facilities for the storage, conservation or regulation of water be constructed in a manner consistent with the full utilization of their potential for the enhancement of fish and wildlife and to meet recreational needs; and further finds and declares that the providing for the enhancement of fish and wildlife and for recreation in connection with water storage, conservation, or regulation facilities benefits all of the people of California and that the project construction costs attributable to such enhancement of fish and wildlife and recreation features should be borne by them.

It is the purpose of this chapter to provide for the planning and construction of water storage, conservation, and regulation facilities and associated fish and wildlife and recreation features consistent with this declaration and to provide funds therefor on a continuing basis.

11901 Any portion of the cost of a project paid by funds pursuant to this chapter shall not be considered a part of the construction costs for the purpose of fixing the rates to be charged for water or power from the project.

Article 2 Definitions

11903 As used in this chapter, "project" means any physical structure to provide for the conservation, storage, or regulation of water, constructed by the State itself or by the State in co-operation with the United States

Article 3. Application

11905 The provision of this chapter shall apply to the Central Valley Project and every other project constructed by the State itself or by the State in co-operation with the United States, including, but not limited to, the State Water Resources Development System

11906. In any project constructed by the State in co-operation with the United States, the funds made available under this chapter shall be limited to that portion of the construction costs attributable to the enhancement of fish and wildlife and to recreation that the State is obligated to furnish.

Article 4. Planning and Construction of Projects

11910. There shall be incorporated in the planning and construction of each project such features (including, but not limited to, additional storage capacity) as the department, after consultation with the Department of Fish and Game, the Division of Small Craft Harbors and the Division of Beaches and Parks of the Department of Natural Resources, determines necessary or desirable to permit, on a year-around basis, full utilization of the project for the enhancement of fish and wildlife and for recreational purposes to the extent that such features are consistent with other uses of the project, if any.

11911. In planning and constructing any project, the department shall, to the extent possible, acquire all lands and locate and construct, or cause to be constructed, the project and all works and features incidental to its construction in such a manner as to permit the use thereof for the enhancement of fish and wildlife and for recreational purposes upon completion of the project

11912 Funds expended under this chapter shall be used to provide for the enhancement of fish and wildlife and for recreation and shall not be used for preservation of fish and wildlife.

Article 5. Financing

11913 All moneys transferred to the department by Section 6816 of the Public Resources Code are appropriated without regard to fiscal years for expenditure pursuant to this chapter to meet the requirements of Sections 11910, 11911, and 11912. The department shall not make any such expenditure with respect to any project unless and until

the expenditure, and the plans for enhancement of fish and wildlife, and recreation, for the project have been approved by the California Water Commission.

11914 The department shall alter the rates to be charged for water or power from any project on which funds under this chapter are to be expended to reflect any change in the allocation of costs which would result from the expenditure of funds under this chapter

Sec. 3. Section 6816 of the Public Resources Code is amended to read:

6816. All moneys and remittances received by the State pursuant to this chapter, except rents, bonuses, royalties and profits accruing from the use of state school land, shall, with the exception of the amount which is appropriated by Section 898 of the Military and Veterans Code to the ~~Veterans' Dependents' Education~~ General Fund, be deposited in the State Treasury to the credit of the State Lands Act Fund, which fund is continued in existence. In addition thereto, such other moneys shall be deposited in such fund as may be provided by law. The moneys in the fund are hereby appropriated as follows:

(a) For the payment of refunds, as authorized by the commission and approved by the State Board of Control.

(b) The remainder of the moneys shall be used by the commission, with the approval of the Director of Finance and the consent of the Governor, to carry out the provisions of this chapter, including the acquisition of real property or interests therein, the purchase of materials and supplies, and the conducting of operations by the State as provided herein, the payment by the State of such sums as may be provided pursuant to agreements or contracts authorized herein, and the payments of the necessary expenses of the commission

(c) Upon order of the Controller, the remaining balance shall be transferred as follows:

1 ~~Twenty-three and one-third percent to the State Beach Fund and 46% Seventy percent to the State Beach and Park Fund~~; provided, that the total aggregate amount transferred to both of said funds in any one fiscal year beginning after June 30, 1956, shall not exceed twelve million dollars (\$12,000,000)

2 The remainder to the ~~General Fund~~ Department of Water Resources for the purposes of Chapter 10 (commencing at Section 11900) of Part 3 of Division 6 of the Water Code, provided, that any amounts transferred to the ~~General Fund~~ Department of Water Resources in excess of three million dollars (\$3,000,000) during any fiscal year beginning after June 30, 1956 1961, shall be set aside and transferred to the ~~Investment~~ California Water Fund, and shall be available for expenditure only when appropriated by the Legislature.

An act to amend Section 5900 of the Fish and Game Code, relating to preservation of fish

The people of the State of California do enact as follows:

SECTION 1. Section 5900 of the Fish and Game Code is amended to read:

5900 As used in this chapter:

(a) "Dam" includes all artificial obstructions.

(b) "Conduit" includes pipe, millrace, ditch, flume, siphon, tunnel, canal, and any other conduit or diversion used for the purpose of taking or receiving water from any river, creek, stream, or lake

(c) "Owner" includes the United States (except that for the purpose of Sections 5901, 5931, 5933, and 5938, "owner" does not include the United States as to any dam in the condition the dam existed on September 15, 1945), the State, a person, political subdivision, or district (other than a fish and game district) owning, controlling or operating a dam or pipe

(d) "United States" means the United States of America, and in relation to any particular matter includes the officers, agents, employees, agencies, or instrumentalities authorized to act in relation thereto.

Assembly Joint Resolution No. ---- Relative to federal study of California fishing problems

WHEREAS, The federal government is closing an ever-increasing area of most productive fishing waters for security reasons and for training and practice areas for the armed forces which is creating a serious problem as to the use of California fishing waters; and

WHEREAS, California fishing is becoming more and more involved in interstate and international problems both as to California fisheries and as to other areas fished by California fishermen; and

WHEREAS, The solution to these problems and provision for the proper utilization and conservation of its fish resources can be achieved only through cooperative joint action by the federal authorities having jurisdiction and the State of California; now, therefore, be it

Resolved by the Assembly of the State of California, jointly, That the Congress of the United States, the Secretary of the Interior and the Secretary of Defense are requested to study these problems and join with the appropriate California authorities in attempting to bring about their solution; and be it further

Resolved, That the Chief Clerk of the Assembly is directed to transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Secretary of the Interior, the Secretary of Defense and to each Senator and Representative from California in the Congress of the United States.

CONDENSATION OF TESTIMONY

The following testimony in most cases is condensed, excerpted and/or paraphrased from the transcripts of hearings held on

January 18-19, 1960, at Sacramento;
June 10, 1960, at Redding,
June 13, 1960, at Sonora,
June 21, 1960, at Fresno,
June 23, 1960, at San Diego;
August 9, 1960, at Stockton;
August 31, 1960, at Los Angeles.

In some instances, the testimony is taken verbatim from the transcript. In a number of instances in which the witness expressed substantially the same ideas at more than one hearing, only one condensed statement is included.

LESTER COFFIN, Secretary, Northern California County Supervisors Association

"The Directors of the Northern California County Supervisors Association unanimously approve of your proposed legislation to divert money from the tideland oil revenue to a special fish, wildlife, and recreation construction fund to enhance the fish and wildlife and recreational features of state-authorized water projects. This proposal to have an annual limit of \$3,000,000.

"If the association can help you in any way with this legislation, please feel free to contact me at any time."

DON VIAL, Administrative Assistant and Director, Research and Education of the California Labor Federation, A.F.L.

The California Labor Federation as you know, is wholeheartedly in support of the proposed legislation. We think that it is high time that the Legislature take hold of this problem of assuring the people of California that in our water and power development and our water resources development, that the problem of recreation be taken care of. We need assurance that recreation will be taken care of as a multiple benefit of water development. There must be legislative assurances that the full potential of recreational development will actually take place under any proposed water development. It is important that the Legislature tie this policy down.

We have a tremendous history of water and power development in California and that history is just loaded with shenanigans that are going on daily. Let me give just one example of what I mean by shenanigans and why it is important to tie down policy and law before we move ahead with a project. This example relates to another aspect of water development, but it is just as germane to recreational development. The example is the Pine Flat Dam which was constructed by the federal government under a flood control project. When the project

was proposed, it was part of the integrated Bureau of Reclamation program which provided for use of the North Fork of the Kings River for power development of the San Luis River. It provided for irrigation benefits below the river, but the dam was constructed under a flood control policy and it was the assumption that flood control was the primary benefit and irrigation benefit was the small benefit which situation was completely reversed by administrative action. What they forgot to do was to initially negotiate a contract. So for the past eight years they have been attempting to negotiate in this area.

Experience has demonstrated that it is highly desirable for the legislative body to lay down a policy declaration for subsequent administration by the planning and construction agencies. We in the California Labor Federation believe that the time is long overdue for the Legislature to take definite action on the questions related to recreational development and fish and wildlife enhancement. Organized labor in California has long held to the position that not only the full potential of recreation and fish and wildlife enhancement be realized from multiple purpose water development, but also that these benefits are a proper charge to be borne by the general taxpayers. Although recreational benefits from water development may be concentrated in given project areas, it is a known fact that with today's highways and automobiles people travel from all parts of the State to enjoy them. Indeed, leisurely travel of substantial distances is an integral part of the vacations of many families and individuals. No longer can anyone seriously argue that these recreational benefits are local in nature.

Further, we in organized labor urge rejection of the viewpoint that looks upon recreational development as some kind of a frill to be tacked on to the end of a project only if development funds permit. The needs of our exploding population should be reason enough to reject this approach, but on top of this we must give special consideration in our planning to the increased leisure being acquired by workers as they become more and more efficient in the production of goods and services. It is in this light, therefore, that we look with favor on the bill that is before this committee relating to wildlife and recreation enhancement features of water projects.

LEE E. TRIPP, Special Representative, California State Grange

The California State Grange, since its founding in 1873, has had as its cardinal principle, the preservation, and has advocated the fullest recreational use of wildlife, forests, mountains, lakes, streams and beaches.

With California's population now approaching 16,000,000, and prospects for a future increase of five or six million within the next 10 years, it is necessary that we take adequate steps *now* to expand our present recreational facilities to cope with the tremendous growth, which will greatly tax the capacity of these facilities in the near future. The California State Grange urges a judicious expenditure of funds, as proposed dams, reservoirs and other implacements are built, and that such funds be apportioned so recreational and wildlife facilities can be properly established.

Agricultural users of water and power are paying their fair share of the construction costs of the facilities provided for recreational

benefits, so we think it is just and fair that users of these recreational facilities provide means for repayment of the additional money that will be necessary to properly provide facilities for such use.

This reimbursement should not be out of balance or burdensome, but, in some measure compensate for the funds originally provided. We do not feel that the general public will be averse to this proposal and it is our opinion that this is sound public policy and should be so recognized when plans are being made.

Thousands of the members of the California State Grange, from the Oregon line to the Mexican border are ardent sportsmen and users of the recreational facilities now provided by our State, and they do not object to carrying their share of the reimbursement burden for added facilities afforded by this proposal.

**RAY HUNTER, Director of Natural Resources, California
Farm Bureau Federation**

The California Farm Bureau Federation is a general farm organization representing a membership of more than 65,000 families and is headquartered at 2223 Fulton Street, Berkeley, California.

This statement is directed toward the need for sound and adequate planning and development of recreational facilities, including fish and wildlife, in connection with water project development by the State of California.

We have studied analyses of the legislative proposal relating to payment of costs of water projects attributable to fish, wildlife and recreation, as referred to in the May 12, 1960, press release issued by Mrs. Pauline L. Davis, chairman of this committee. California Farm Bureau Federation policy supports the principles advocated in this legislative proposal. However, of course, we will wait until a specific bill is introduced in the Legislature before taking a specific position as such.

Our house of delegates, made up of representatives of each County Farm Bureau in California, adopted a resolution at the 1959 Annual Meeting (Policy Resolution No. 45) entitled "Policy for Development of California Water" which contains the following statement.

We must recognize, as the population grows and the State develops further, much greater values should be placed on such non-repayment features of multipurpose water projects as flood control, recreation, fish and wildlife, etc. A more realistic allocation of cost to these features will, in turn, reduce the costs allocated to the water conservation features.

In our statement presented before the Assembly Interim Committee on Water, September 25, 1959, we had this to say:

By the same token, unless a cost allocation policy, which recognizes the true benefits which will accrue to recreational users 30 to 50 years from now is adopted, water users are in grave danger of paying for a large share of the recreational benefits which will develop in connection with state water projects.

Therefore, it is Farm Bureau's position that sound and adequate planning and development be carried on in connection with state water development to help meet the outdoor recreational needs in the future.

and that adequate allocation of costs be made to these recreational features of such multipurpose water projects.

As to financing the recreational features, our house of delegates adopted a resolution at our 1956 Annual Meeting entitled "Oil and Gas Resources" which reads as follows:

We believe oil and gas royalty revenues to the State including any bonuses for state leases should be expended to produce the maximum of benefits to the greatest portion of our people. To this end such revenues should be used for the development of other and more permanent natural resources, as self-sustaining as possible.

We support the continuation of the policy of placing revenues in excess of those needed for beaches and parks, or the development of other natural resources, in the California Investment Fund. We urge that special consideration be given to the development of the State's water program and know of no more appropriate use for this fund than for the development of our statewide water resources.

Our policy supports the principle that the tidelands money, now being transferred to the General Fund, be used for natural resource development such as advocated by the legislative proposal referred to in the May 12 press release by Mrs. Davis.

Again at our 1959 Annual Meeting, the California Farm Bureau Federation house of delegates adopted a resolution entitled "Recreation" which reads as follows:

California's population is increasing at a rapid rate, and the average hourly work week has decreased, resulting in a correspondingly greater demand upon available recreational facilities. The impact upon agricultural lands has already been great and will be steadily increasing.

We recognize the need for sound programs of outdoor recreational development. It is our desire to co-operate with the public agencies responsible for such programs. It is also our desire to see that agricultural interests are adequately recognized. To this end we recommend (1) that agricultural representation be included on commissions and committees concerned with the planning for recreational programs, (2) that local units of government assume their responsibility in any increased program of public recreation, including planning, development or control; and (3) that such recreational programs be so established as to become as nearly self-sustaining as possible.

RICHARD W. DICKENSON, Representative, Board of Supervisors,
San Joaquin County and the San Joaquin County Flood Control
and Water Conservation District

With the anticipated growth in the San Joaquin County area we are becoming increasingly aware, not only of the vital need of preserving existing recreational resources and facilities, but also of expanding available recreational facilities. The position of San Joaquin County has been made clear that with respect to any water development pro-

gram we will insist that the recreational value of the Sacramento-San Joaquin Delta Waterways is in no way impaired

We are also interested in the matter of the enhancement of our fish and wildlife resources. It is our view that it only makes good sense, and experience has certainly shown, that it is much cheaper to provide for the enhancement of fish and wildlife and for the construction of recreational facilities at the time of the initial construction of a water project rather than to have to return to the project at a later date when land values and construction costs may be much higher

It is further our view that it is a wise and equitable policy to return tidelands oil royalties to the field of natural resources from which they are derived and to utilize such funds for the improvement of our natural resources

We urge that in no event should fish and wildlife enhancement or recreational development harm the primary purpose of water projects nor should existing water rights be infringed upon

If there is any doubt, with respect to the obligation of the Department of Water Resources, to insure preservation of existing fish life and recreational features, we wish to lend our wholehearted support to legislation designed to insure such provisions

CARL O. GERHARDY, Representative, Los Angeles County
Department of Parks and Recreation

The Los Angeles County Department of Parks and Recreation thoroughly and fully endorses the legislation that you have proposed relative to the matter of enhancing the wildlife and recreational features of water projects.

LEE F. PAYNE, Chairman, Fish and Game Commission, County of Los Angeles

The Fish and Game Commission of the County of Los Angeles, in meeting Thursday, August 18, 1960, authorized to submit this statement before the August 31, 1960, meeting of the Assembly Interim Committee on Fish and Game.

The Fish and Game Commission of the County of Los Angeles approves in principle Tentative Draft No. 3 of an act to add Chapter 10 to Part 3 of Division 6 of the Water Code, and to amend Section 6816 of the Public Resources Code, relating to payment of costs of water projects attributable to fish and wildlife and recreation and making an appropriation therefor

The commission further authorizes the chairman to testify in writing before the Assembly Interim Committee on Fish and Game that the commission will, if the final draft of the proposed act is changed in no substantial part, recommend to the Board of Supervisors of the County of Los Angeles that said board recommend the passage of the proposed act by the Legislature of the State of California

C. B. BOW, Supervisor, San Joaquin County

It is my belief that the cost of enhancing fish, wildlife and recreation should not be borne by water users or those who would benefit from flood control, but that such enhancement should be a nonreimbursable cost.

THOMAS M. CARLSON, Attorney, Contra Costa County Water Agency

It is my intention to recommend that the board approve the bill relating to the wildlife and recreation enhancement feature of water projects.

W. J. O'CONNELL, Engineering Consultant, Contra Costa Water Agency

Recreation is the major industry in Contra Costa County. It is not a potential industry, it is a large and growing substantial taxpaying industry. Its survival depends upon the maintenance, preservation and enhancement of the fisheries of the delta. For that reason we have no desire and no interest in taking any other position or suggesting any other position than the strongest possible support for the type of legislation that will make funds available from whatever source for the enhancement of fish and wildlife and the continuation of already existing recreation.

ROBERT T. MONAGAN, General Manager, Delta Water Users Association

We would like the committee to know that we are very much in favor of the principles encompassed in this proposed legislation. We believe in enhancement of recreational and fish and game facilities. They should be a part and rightfully so of every water project in California, but the cost should be borne by the general taxpayers and not attached to the cost of water to be charged against the ultimate water users. We think that the proposal is sound and certainly these costs should be in the nonreimbursable realm. We are not financial experts who can indicate the particular financial arrangement of this program, but to us it seems to be fair and equitable.

WILLIAM GIANELLI, Consulting Engineer, Appearing on behalf of the County of Plumas and the Plumas County Flood Control and Water Conservation District

The future economic growth of Plumas County depends largely upon an adequate water supply being available at all times for consumptive purposes such as irrigation and domestic use, in addition to the non-consumptive uses such as the enhancement of fish and wildlife and recreational facilities.

Plumas County is now preparing a general plan for the development of our county which is to be related to the multiple use of our natural resources.

It is our opinion that all suitable water producing areas should be developed for the maximum multiple use possible and that all such projects should be designed and operated to provide these benefits in the county of origin before the water is ultimately exported for use in other parts of the State.

When the recreational facilities are developed for persons who are not using the ultimate product, it would appear most logical that the capital cost of the recreation and fish and wildlife enhancement features of water development facilities be paid for by the State as a whole. This could be accomplished by contributions from the General Fund or from some other source which would reflect widespread but unidentified use. Studies show that the operation and maintenance cost of such facilities can be fully reimbursed by the recreationists

using the facilities. We heartily agree with the concept that the initial capital costs attributable to the recreation and enhancement of fish and wildlife be considered a nonreimbursable cost.

In our opinion, even though we have no specific information as to the exact amount of money which would be made available from this contemplated legislation, the principal of setting aside funds for these purposes is commendable.

It only makes good sense and experience has certainly shown, that it is much cheaper to provide for the recreational facilities at the time of construction of a water project than to have to come back at a later date and make such provisions when land values and construction costs would be much higher.

HENRY F. KEEFER, Member, Shasta County Board of Supervisors

It is well known that the demand made on recreation facilities, especially those on man-made lakes, is surpassing the capacity of those facilities, if the capacity has not already been surpassed. Because of this, full utilization of the potential of our recreational facilities is a must and consequently we are very pleased to see the proposed legislation.

There is one further point we would like to bring up at this time and this is with regard to the operation of the recreational facilities. It is quite probable that the operation of many of these facilities will fall into the hands of local governmental organizations. We feel that in such cases not only the capital outlay improvements, but also the subsequent maintenance and operation of recreational features of state projects should be on the basis of a joint basis between the State and local governments. In some way this legislation provides for State responsibility in planning, design, financing and constructing recreational facilities in conjunction with the state water projects, establishing fund for such work, and provides administration through the Department of Water Resources in the California Water Commission. It is in keeping with the stated policy of Shasta County, with respect to such facilities, and consequently we endorse the proposed legislation.

I have been asked by the City of Redding to state to this committee the position of Shasta County and our views on the proposed legislation are concurred in by the city.

PAUL BEERMAN, Director of Operations, City of San Diego

Since the prime purpose of the State's water program is to conserve and utilize our water resources, we feel that any supplementary activity should alternatively be self-sustaining. In as much as the recreational projects contemplated are to be utilized by people from many parts of the State, we believe that capital improvement costs should be borne by funds normally allocated for fish and game and recreational purposes. Experience in the San Diego area indicates that any project patronized to any reasonable degree can fully reimburse operation and maintenance costs from user fees.

The City of San Diego has been in the foreground in providing recreational facilities on its water supply reservoirs more than almost any other agency in the State. We have done this for a period of almost 50 years and we have done it quite successfully. This indicates that addi-

tional financing is necessary but that operation, maintenance, and depreciation costs have been met. On heavily patronized projects it is even possible to realize some reimbursement of capital costs.

It would appear that funds from the Department of Fish and Game could be utilized for those capital improvements specifically benefiting the hunter and fisherman, while recreational facilities such as beaches and swimming areas could possibly be financed from funds allocated to the Division of Beaches and Parks.

Any work on the dams and acquisition of rights-of-way should be with the initial construction. Construction of incidental recreational facilities should be appropriately programed, but time-wise, should be incorporated into a general overall state plan and based upon public demand.

We have no objection to the allocation of up to three million dollars a year of state funds toward the financing of fish and wildlife facilities, but the funds should not be taken from the oil, gas, and mineral revenues of the State. The City of San Diego has successfully operated recreational facilities on its reservoirs for many years and has worked with the Department of Fish and Game at some of the reservoirs on a co-operative basis. The program has generally supported itself with respect to all operation and maintenance costs and has in our local areas largely repaid the capital investments made at the reservoirs for incidental facilities. We support a well-balanced development program. We wanted to point out, that in the overall aspect, we think there should be a general overall statewide programing with respect to the water facilities.

AUBREY R. LYON, Secretary, Bishop Chapter, Izaak Walton League of America, Inc.

During the past 20 years recreation has become one of the major industries of the State through providing housing, goods and services to meet the needs of traveling and vacationing patrons.

We believe that the planning for commercial and industrial growth should include provisions for adequate recreational opportunities; that habitat for fish and wildlife must be preserved and improved, that public access and reasonable recreational use for present and future time should be recognized and assured as a public need, and included as an integral part of the statewide planning. We would like to be assured of some planning and financing, to implement the preservation and enhancement of habitat for fish and wildlife and for recreational development for public use.

The provisions in the proposed bill now under consideration by your committee seems to be an appropriate step in the direction of the conservation objectives to which our organization is dedicated.

WAYNE HELD, State Division Conservation Director, Izaak Walton League

The California State Division of the Izaak Walton League of America, Inc., is extremely interested in the proposed legislation which would allocate certain funds for nonreimbursable features of any water project pertaining to the enhancement of fish and wildlife and all areas of recreation.

While the term nonreimbursable indicates there will be no reimbursement to the State for recreational facilities, a substantial portion of our membership believes that as nearly as possible, users of recreation facilities should pay for these uses. We believe this is possible through use charges so that the general taxpayer is not further obligated to support specialized activities for the limited few. We do not believe sportsmen and other recreationists are after a free ride and that they will welcome state provisions that they be charged for the services provided.

Today, recreational use of water is of primary importance—economically as well as esthetically. The league believes the nonconsumptive recreational uses of water are sufficiently important to be recognized in law, and the Legislature is to be commended for enacting several statutes into the Water Code which beneficially relate to the recreation and water development.

Business and industry must realize their dependency upon a healthy, happy people, both as a labor supply and as a market. Increased leisure time is enabling many more Californians to turn to outdoor recreation in our state and national parks, forests and wilderness areas. These areas are thus becoming of increasing importance in supplying the opportunities for physical, mental, and spiritual recreation essential to a productive people. Each citizen has a vital stake in building and maintaining these areas.

The Izaak Walton League of America is devoted to improving and perpetuating our resources of soil, woods, water and wildlife. The California State Division, IWLA, believes that the proposed legislation now being considered by your committee—setting up a special fund for construction of any water project features pertaining to recreation and the enhancement of fish and game—will greatly assist in building a better outdoor America within California. Therefore, we support the enactment of this legislation.

PAUL W. HILLER, Member, Boating Council

The California Boating Council, Inc., has extended considerable effort over the past years to convince the private companies to open water reservoirs to recreational boating and fishing. This has been slowly rewarding.

We support the theory of this proposed legislation wholeheartedly. We do not believe either the federal or the state government should enter into any type waterway construction project without considering the recreational potential and needs of the people. We believe the costs involved in determining such needs is rightfully a regular cost of the project and should be considered as such. We believe that the cost of building such needs is also a legal expenditure of the building costs overall. However, we do believe that wherever practical any recreational facility building and operation thereof should be first considered as one to be let for bid by private enterprise.

Under this consideration we might add that bids should not be limited to the lowest bidder for the building of the project or the highest bidder for its operation. Such a requirement has proven very unsatisfactory, as firms will underbid to get the job then not be able to

finish it. On the other hand, firms will overbid for lease and the business does not warrant the high lease they bid

However, we recommend this legislation include the agencies of both the State Department of Fish and Game and the Division of Small Craft Harbors. We ask for the inclusion of the Division of Small Craft Harbors so as to assure the people that the men trying to run our two important agencies that each will be aware of the plans of building the water facilities. We believe this would insure closer liaison between the agencies and eliminate overlapping planning of launching sites

AUBREY LYON, Representing the Inyo-Mono Coordinating Council

Our standard of living, economical well-being, and life are dependent upon the soil and water resources. The legislation regulating their use is of prime concern to every citizen without regard to the area in which he lives or works. We are in agreement with the need for an established policy that water storage facilities be so constructed to provide for recreation and preservation and enhancement of fish and wildlife on a nonreimbursable basis. We believe that mandatory, rather than permissive legislation, is necessary in the planning and construction of projects so that they will provide for full development of recreational potentials and the fish and wildlife resource. The costs of enhancing the fish and wildlife resource and providing the recreational facility should include federal matching funds under the Pittman-Robertson and Dingell-Johnson Acts of Congress where feasible. We believe that maintenance, upkeep, and regulations for the use of access roads should be the responsibility of the government, of the county, in which they are located. Recreation areas should be established with suitable authority vested in the local county government to insure that the public interest is protected, that standards of service be established and enforced, and that all resort operators be assessed equitably and equally through property taxes.

ELMER BOSS, Representative, Stockton Area Rod and Gun Club

As a representative for the sportsmen and the people in this area, I would like to say that we concur very much with this piece of legislation that will protect the fish and game. The enhancement is going to be very important for the future of our people.

F. F. JOHNSTON, Director, Buck and Fin Sportsmen Organization

I think we can assure the committee that you will have the support of our club in your program to enhance fish and game and recreation. We would rather have a special fund by far than to depend upon the General Fund.

JOHN GILCHRIST, Representative, Northern California Seafood Institute, the Tyee Club and the Aquatic Resources Committee

I feel sure that all three of the organizations that I represent would support this proposal, at least in principle. In my opinion there is nothing in state law that assures the protection and the enhancement of our fisheries and wildlife.

We feel that what you are trying to achieve here is beneficial and should certainly be considered for enactment

MARGARET K. SILVA, Private Citizen, Tuolumne County

This area is not in quite as bad condition as Inyo County, but it is facing somewhat the same thing in as much as most of the water projects that have been developed in this county are for export purposes. In the past no great consideration was given to protecting the fish and wildlife development and the recreational possibilities. I can understand very readily the position of people who develop water projects for irrigation and for power, in wanting to use and conserve all that water for those purposes and it is readily understandable that the irrigator and the man who owns the property and purchased that water is not interested in paying for recreational facilities. But I think that there is one important part of this thing that has been touched upon, but not heavily emphasized, is the fact that recreation is one of the biggest businesses, the biggest industry in the State of California and to support that I would like to point out particularly that the taxes accruing in the State for businesses that are primarily recreational are tremendous. It is not only the gasoline taxes that support our highways, nor the sales tax. I believe that in all of our mountain districts these recreational facilities that would become a part of the water development would provide a great deal of support to the local economies.

I would like to point out that in this county we have numerous reservoirs. For many years we only had the reservoir at Pine Crest which is the development of a privately owned public utility. It has been highly developed for recreational purposes because it lies entirely within the Forest Service boundaries and the recreational facilities are supplied by both the United States Forest Service and by private concessionaires who are business people paying local taxes, both directly on the development and indirectly through the in lieu taxes which we receive in this county from the United States Forest Service. In addition to that, we recently have had developments called the "Tri-Dam Project." One of the largest reservoirs in that group is entirely unavailable for recreational usage. That project and its three reservoirs was assigned entirely for export water and electricity with no consideration given to recreational development.

We have Beardsley Reservoir, the nicest and finest areas for fishing, but there is very poor access. The road in there was built for construction purposes, it is surfaced but it is not surfaced well enough for heavy traffic. There are no boat ramps and no launching facilities. There was no consideration given in the construction of that project for recreational development. It does not pay taxes in this county. Because of the lack of planning and consideration for the future welfare of not only this county but of the general mass of the public that desires this kind of facility, we are now in a sad position. We have certain civic responsibilities for providing basic police service that require tax support but we get no support from that facility whatsoever. The power is sold to the Pacific Gas and Electric Company, tax free, and the waters exported to an irrigation district below here and is completely tax exempt.

Tulluck Reservoir is part of that system and I know the county entered into an agreement with the Department of Fish and Game for the development of certain recreational areas. We have put tax money into this development primarily for this reason. We are responsible for the recreation usage of that reservoir and for policing it. We had to devise some means for getting to the county from that facility. While it is accessible from this county, the people who use it come from outside the county and they don't even buy a hot dog or a gallon of gasoline from taxpaying businesses in this county.

While I have not studied this bill in sufficient detail to intelligently comment upon it, I can say it points in the right direction, because the facilities that are necessary for the use of the public upon all these reservoirs are facilities that are enjoyed by the general public. While the concessionaires might develop businesses that go onto the tax rolls, still the people that are going to benefit are not the water users or the power users. It is the general public and some method, some means, should be devised so that they can bear the cost of the facilities which they enjoy.

I think that the people that are contemplating the purchase of the water are much disturbed over the fact that they perhaps will be charged for these things rather than the general public who wants to enjoy the recreation. I have had sufficient contact with the recreational user over a period of about 25 years to know that when they want to go fishing or hunting or swimming or boating, they are willing to pay for it. This seems to me one means of allowing those people who are going to enjoy these facilities and who are demanding these facilities in more ways than one by allowing them to pay for the enjoyment they desire to participate in.

HENRY WILCOX, Representing the Big Pine Civic Club of Inyo County

We believe that the proposed bill should be implemented so as to restore and maintain proper conservation of fish and wildlife in all areas of California and prevent abuses of them anywhere in the State. We believe that the field men of the Department of Fish and Game have the best knowledge and judgment for determining the conditions necessary for the enhancement of fish and wildlife and that their recommendations should establish policy in this connection. We subscribe to the contents of the report prepared by Mr. Aubrey Lyon for the Inyo-Mono co-ordinating council in connection with the proposed water bill.

WALTER T. SHANNON, Director, Department of Fish and Game

The future will undoubtedly bring about a large number of water projects and it is only proper that such developments include protection and where possible, enhancement of fish and wildlife resources. Legislation should be enacted establishing mechanics and funding methods as well as policy for both preservation and enhancement of fish and game for all projects.

The Department of Fish and Game has consistently advocated and adhered to the policy of making the cost of *protection measures or facilities* an integral part of the project and therefore reimbursable or repayable through the sale of the products such as irrigation water.

and electricity. On the other hand, we have considered that *measures or facilities for enhancing* fish and game resources should be financed from local, state, or federal funds on a nonreimbursable basis.

Our preliminary review of the proposed bill, indicates that this bill is limited in its present coverage and wording to the nonreimbursable costs of recreation and enhancement of fish and wildlife. As such, it is certainly compatible and consistent with the general thinking of today as we see it. It is recognized that enhancement features for fish and wildlife in connection with water projects will require the funds. We, in the Department of Fish and Game, do not feel that we are in a position to say where this money should come from, that this is up to the Legislature and the administration. We feel that the funding of these proposals is outside our scope and not properly a matter upon which we can recommend.

We would like to point out, however, that the Fish and Game Preservation Fund can't stand the charges needed to undertake such a program as is contemplated in this proposed legislation. It just isn't in the cards unless we go into sizeable licensing increases and I don't believe that is feasible, practical, or desirable at this time or in the very near future. Based upon our present income and what reserve we have, we certainly couldn't finance the enhancement of fish and game resources in a program such as this. The funds will have to come from someplace else.

I think that in some cases the enhancement features would benefit the project user who pays for these things and as a result the cost might be less to him over a period of time. It might also keep the project builder from having to incorporate the enhancement features and pay for it out of his pocket because of public opinion. As an example, we might build a reservoir and then because the reservoir is so desirable and since the enhancement features have not been included, he may be forced into providing the enhancement. In such a case, the boating facilities, ramps, and other facilities may have to come out of the pocket of the project builder and would eventually result in more cost to the user.

In some cases the provision of a minimum pool in the reservoir might be called enhancement. For instance, if they drew the reservoir clear down, that would eliminate fish life. But should an enhancement provision guarantee a minimum pool the dam would have to be built higher but there would be an additional storage capacity which might result in the project user paying less because there would be more water storage. It is entirely possible that the enhancement features may eventually create a lower cost to the project user on the basis that when more people get in and pay for their share, the result can be a lower individual user cost.

**WILLIAM H. FAIRBANKS, Assistant Director, Department of
Water Resources**

During the last decade of intensive water resource study, it has become clearly apparent that opportunities for fishing, boating, swimming, and other forms of outdoor recreation are among the major benefits resulting from the development of water resources. During this period the Department of Water Resources has wrestled with a good

many problems pertaining to fish, wildlife, and recreation. In early stages of planning the problems were of the type of what would it cost and who is responsible. Some of these questions are still with us, but as the State's Water Development Program has become specific, so have the recreation questions.

Today our main question seems to be how are fish, wildlife and recreation costs to be financed. Must the money be repaid in any instance, and if so, by whom? The Department of Water Resources believes that legislation is needed to establish a clear-cut legislative policy as to the nonreimbursability of recreation and fish and wildlife costs associated with state-constructed projects.

In considering the establishment of law regarding the nonreimbursability, careful distinction must be made between preservation on one hand and enhancement of fish and wildlife resources on the other. It is the Department of Water Resources' often-stated view that project costs allocated to the preservation of fish and wildlife should be fully reimbursable by the primary project beneficiary through the sale of water and power. Such preservation can be likened to the relocation or replacement of any property that would be destroyed or made useless because of the water project.

One of the major points of the bill under consideration revolves around a recreation and fish and wildlife enhancement construction fund. This would be a special fund receiving annual appropriations from moneys received from the oil, gas and mineral leases on state lands. This is certainly one method of insuring a ready source of money for recreation development at state water projects. The creation of a special fund for this job, however, in our opinion, raises a number of questions. We believe that the committee is well aware that from a fiscal management standpoint, state fiscal authorities have in the past resisted the creation of a special fund. It is also pointed out that special funds of this character may provide either too little or too much money. If too little money is available the job cannot be done properly. If too much money is made available there is often pressure to spend the funds even if this might carry the program beyond its intended level or objective. There is a possibility that in this proposed legislation the \$3 million might prove to be inadequate for the proper development of recreational facilities of the water projects, which would provide a hindrance. On the other hand, we might find ourselves in a position with too much money provided in a special fund to do the job that we feel it is necessary to be done in each one of these projects as they go forward. However, as we see it, it is quite likely that the \$3 million contemplated in this legislation would provide sufficient funds to do the job.

CLARENCE HAWTHORNE, Assessor, Tuolumne County

One thing that is very disastrous for all mountain counties who have smaller political weight is that we are situated where the recreation development and the development of water resources for the generation of power is taking place. We have government in a proprietary capacity and people often confuse that with general government. When a government in a proprietary capacity comes into another county it generally

has tax exemption and yet it creates a burden on local government which generally it does not want to recognize

So as to stabilize the tax base in smaller, less densely populated counties, every effort should be made to let private enterprise operate the recreational facilities so that they bear their burden of the costs. If this is the intent of this legislation, then we in Tuolumne County will not be hurt.

ROBERT PAUL, Representative, Sports Fishing Institute of Washington, D.C.

I would like to point out that this project of your committee has received nationwide recognition. This is another example, I think, where California has exerted some tremendous leadership. I think great credit is due to the Departments of Water Resources and Fish and Game and, particularly, to the Legislature. The Upper Feather River Project is receiving a great deal of nationwide interest. We think it has been an absolute landmark. It is being used now by four other states and by the Corps of Engineers. It has been a very outstanding example, I think, of how you can assign some dollar values in recreational benefits and, in so doing, justify the construction benefits as well as meet what is obviously a public need.

I would like also to congratulate you on the recognition that you have given to the point that recreation and reservoirs are broader than just fishing and hunting alone. It is absolutely necessary, if we are to meet our public responsibility, to think in terms of broadening this base so that the person who buys a hunting and fishing license does not have to carry all the load. This is the traditional way of financing these developments. But the state fish and game departments who depend on revenues from licenses are just not capable of maintaining the capital improvements that are necessary, in addition to which there is a large segment of the public that may not be hunters and fishermen who use these reservoirs as soon as they are completed.

In fact, if there is any one thing you can generalize, it is that a week after the reservoir is completed the people in the area have forgotten what the primary purpose was and they look on it as a place to go fishing and boating. The flood problem is solved. It never gets back in the papers. It is something that is hardly heard from again.

Another point I would like to make is that this same subject is receiving a great deal of attention in Washington, D.C. Representatives Fisk, Moss, Balden, and others have introduced legislation to make recreation a purpose of federal water development. The intent is to give legal authority to what the Corps of Engineers is doing now. The Corps of Engineers as well as the Bureau of Reclamation have considered recreation as part of water development for many years. But they have never had specific legislative authority and direction for it. Now they are getting into these problems—how much money can we spend? I mean—what we can justify. They have found that just having historical background is not enough. They need specific legislative direction. This is a point for your committee to consider.

Amendments to the congressional bill provide that the Corps of Engineers and the Bureau of Reclamation can plan for recreational develop-

ment. Another amendment requires that, in the case of land acquisition and recreational development, specific reports are to be submitted to Congress at the time the project goes in for authorization. This is the point that has been brought out here—that the agencies themselves feel that it is quite important to bring these things specifically to the attention of the legislative body in order to obtain their counsel and guidance and approval of the specific plan. I think the reason for this is clear. In the past, there was always lots of fighting about why spend the money. Now I think the intent is the other way. I think they want to avoid the mistakes that we made at Folsom and the other reservoirs where, after the facilities were completed, they are inadequate.

A great deal of discussion has been given to the word "enhancement." I think it is confusing. A better way to consider this is to say we are actually meeting a public need. Certainly the construction agencies have a legal as well as a moral obligation to take care of the public's interest in using these reservoirs. It is pretty hard to argue whether you should spend a dollar here and a dollar there or call it enhancement or medication or whatever word that you use. I think the need for the program contemplated by your bill is obvious. The source of funds, I think, is probably a detail that can be worked out. If it is not possible to get the needed money from tideland revenues, I certainly hope that you investigate the other sources of money, either to general fund obligations or some other source. The mechanics of the thing are equally immaterial—the agency does the work. I think the Department of Water Resources has demonstrated a real ability in planning and I think they can do an equally good job in construction, operation and maintenance.

In California you do have another agency that I cannot help but mention. This is a very fine program along these same lines constructed by the Wildlife Conservation Board. If I can leave any suggestion with you, I think the wildlife board has done a fine job, probably the best in the country, in the development of public access and helping local communities and districts develop reservoir recreational facilities. It is an excellent program. They could use more money. If you don't know what else to do with your three million dollars, I would certainly suggest the Wildlife Conservation Board could handle it and do a darn fine job.

It might be of interest to note that the Corps of Engineers allows up to 15 percent of the cost of a project to go into recreational facilities. It occurs to me that this three million dollars a year over a 15-year period would come out to perhaps three percent of the cost of this project which you were considering. On this basis, I would say that you were getting a very economical job that can be justified very easily in the light of federal experience.

EDDIE BRUCE, President, California Wildlife Federation

We recommend that Section 5900 of the Fish and Game Code be amended to require that the State of California, as an owner of a dam, also provide for the protection and enhancement of fish and wildlife.

We also feel it to be appropriate that the proceeds from our natural resources be used to preserve and enhance another resource that is

gravely endangered. This philosophy should overcome the objections of the water users who would feel they were paying for a program from which they receive no direct benefits.

GENE CONWAY, Water Committee, San Diego Wildlife Federation

As far as San Diego County is concerned, there probably will not be any need from a recreational standpoint for any additional dams or impoundments. All we need now is the water to fill our existing facilities.

We have always been interested in this county in a program to provide some form of recreation to the sportsman so he doesn't have to go on a trip that might cost him two or three hundred dollars to the high Sierras or go to Northern California and get in the hair of some of our Northern California fishermen and hunters. We feel as though we would like to provide something local so that people can find time to spend the weekend in some sort of fishing and hunting.

In San Diego County, I have seen the revenues that have come from the operation of our city lakes. I have seen that sometimes it reaches rather substantial sums. It has always gone into the general fund of this county. We sportsmen have always thought that a greater portion of that revenue coming from the use of these establishments should be plowed back into the facilities and used for the purpose of enhancing fishing and hunting.

Another question is: What is going to be done with the revenue over and above the enhancement costs or the maintenance costs? I think there might be a problem in planning some way to spend that money.

In conclusion, I want to say that this county fish and game federation is fully in accord with the water program plans of your committee and will fully support it.

JOHN F. REGINATO, General Chairman, Shasta Cascade Association

We are definitely in favor of this legislation. It spells out in dollars and cents a fund for fish and wildlife enhancement and for recreation. We have had some concern as to whether sufficient legislative policy existed in this field. We are very much in accord with the position of the Department of Water Resources in that the basic facilities should be developed and planned for in the initial construction stages of the project.

It has been seen that, as soon as the first bucket of water empties into a reservoir, there will be individuals with boats and other recreation seekers who will try to use these facilities. Unless there is concurrent construction of these facilities, they will certainly be a detriment to the county in which the reservoir is being completed. From our experience here in Northern California, the northern counties are not in a position to finance the development of the basic recreational facilities and yet these facilities create a problem for the counties in health, sanitation, fire and law enforcement. We are of the opinion that the State has a definite responsibility to finance the construction of basic recreation facilities as well as the enhancement of the fish and wildlife resources.

CECIL PHIPPS, Vice President, Sportsmen's Council of Central California

To sum up our position, we believe the fish, wildlife and recreational features of any water project, whether public or private, should be built at the same time as the project is constructed and the costs applicable to these features should be a nonreimbursable cost charged directly to the project.

GEORGE D. DIFANI, Executive Secretary, California Wildlife Federation

In our preliminary studies, it was discovered that Section 5900 of the Fish and Game Code imposed certain conditions upon any private dam construction and even upon the federal government. We were amazed to find that the State had excluded itself from those conditions. It would seem to be desirable and advisable for the State to subject itself to the same restrictions to those imposed upon private citizens and the federal government. I heartily agree that the amendment to Section 5900 of the Fish and Game Code that would include the State as owner of a dam is a must.

I also deem it appropriate that the proceeds from our natural resources be used to preserve and enhance other resources that are gravely endangered. This philosophy should overcome the objections of water users who would feel that they were paying for a program from which they would receive no direct benefits.

I might say that many of us have spent a good many years in following the problem in reference to water and fish and wildlife and we have been stepchildren for a good many years. We are certainly happy that we are beginning to be recognized. This legislation will do a great deal towards the demand for outdoor recreation. Actually, this legislation is probably the answer to our prayers, you might say.

J. MARTIN WINTON, Chairman, Advisory Committee to The California State-Owned Mendota Waterfowl Management Area

The transfer of water from one watershed to another in California poses many serious problems and, as we progress in the water development of California, we must plan and consider the effect on fish and game. May I propose that a certain percentage of water be allocated from any project, State or federal, in direct relation to the total amount of water available from the project and that the use of this water become the property of the people of the State of California to be used only for the conservation of the fish and wildlife. I feel the private taxpayer is entitled to know the quantity of water available for fish and wildlife from private, state and federal projects whether it be 1 percent, 5 percent, or 10 percent of the total water available and that, if he then could be assured this percentage of water by legislation, the diversion of 100 percent of our water for agricultural and industrial use that is now taking place could be eliminated. There are people now who feel that the cost of State- and federal-owned land for wildlife is not in keeping with sound business practices or conservation and that both the State of California and the federal government are at this time land poor. Personnel and funds for the development and maintenance of government-owned property are not now available. The Hometown Project which contemplates operation and ownership vested in local

political subdivisions seem more practicable and less expensive to the taxpayer than the establishment of more bureaucratic agencies by both the State and federal governments. In my opinion there is a distinct difference between fish and game and recreation. Because I think, in this day and age, with the water sports becoming what they are and considering the facilities that must be available—and the waterworks that should be available for beaches and parks, for example, that there is a distinct difference.

I would just as soon see the recreational facilities, such as those at Millerton Lake be included in the jurisdiction of beaches and parks, but I do say that no money should be allocated to acquire lands for fish and game purposes.

F. ERLE WRIGHT, Chairman, Delta Waterways Inter-Club Committee

The policy of my organization is to oppose any structure that will restrict or eliminate any of the recreational use for which we are now or might in the future use our waterways. We believe in multiple use of the waterways. We are further opposed to any attempt under the guise of multiple use of water which would delete or eliminate any single use of water in favor of some other uses of water. We also oppose any attempt to charge us for the water for which we are not now being charged. By charge, I mean fees. We feel that we pay our way with taxes, many taxes on the boats, motors, fish tackle, and other gear that we use upon the water. I assure you that our group will resent and will constructively oppose any attempt to put a lock in the Delta waterways that we have to pay to use. We don't believe that if a lock is necessary for this water system to work, we should be charged to pass through that lock. We now have passage to any part of our Delta waterways without charge or fees and we most sincerely feel that, should locks or bridges for boat passage be constructed in the Delta, they should be absolutely free with no fee or charge made directly to the public who must use them.

I would like to state that our group endorses unanimously the intent of your proposed addition to the State Water Code. Now you notice that I said intent, because we do believe that it is your intent to enhance our waterways with nonreimbursable funds.

ROBERT DURBROW, Representative, Irrigation Districts Association of California

The Irrigation Districts Association of California represents the organizations that distribute a majority of the water put to use in the State of California. Copies of the proposed legislation were submitted to the association's legislative committee and my presentation will reflect the comments received from those members. Generally, there was interest in the proposal and a desire to hear more about how it would work and perhaps the proceedings of these hearings will supply the extra information and details of operation that we did not send our members with the proposed legislation.

We are pleased that the proposal recognizes our longtime contention that the costs of enhancement of water development projects for recreation, fish and wildlife are not properly chargeable directly to the water users, whose needs have been the cause of the development and whose

credit is usually stretched to the utmost to construct the basic facility. The planning for and separate financing of these additions to projects seem to us to be a step in the right direction.

It is our belief that any state financing of recreation will go further if those using the recreation facilities help to pay the cost, and we believe that, where possible, the users as the direct beneficiaries of such facilities should help with the costs.

Concern is expressed by some of our members that a broad policy that recreation, fish and wildlife facilities should be furnished by the State on a nonreimbursable basis will discourage the development of these facilities by private or local public agencies. Why pay for something the State will supply free? To encourage the maximum development, every effort should be made to get everybody into the act. Use of state funds sparingly on a matching basis or the encouragement of local expenditures will certainly get the State the most for its money.

The proposal appears to set policy for all State and local water development projects but to provide financial assistance only for those constructed by the State. If the policy is to be adopted, we believe that it would only be fair and equitable if the financial assistance were applied to all water development projects, with the possible exception of federally constructed facilities.

At the 1959 session of the Legislature, a law was passed which would require districts to open certain reservoirs to fishing. It would seem logical, if the State is going to declare expenditures for such activities in the interest of the people of the State, that any funds made available by the State should also be made available to districts required to open reservoirs to the public. In spite of the position taken by some of our members, others object to the extension of the proposal to our districts because of the anticipated state regulations which no doubt would come with the gift of any funds.

A final problem which the members of our committee raised concerning the proposed legislation is one of real concern for and distrust of continuing appropriations which are set at arbitrary totals or by involved formulae, and which are not geared to specific projects which have been approved in advance. There is a feeling that at times a real effort is made to use up a continuing appropriation, and often the benefit derived by the state taxpayers approaches zero. We believe that the best means of preventing unnecessary waste of state funds is to submit proposals for enhancement of water development projects annually directly to the Legislature, either as budget items in connection with the water development projects to be enhanced or as separate items describing the proposed additional expenditure in sufficient detail for legislators to understand it.

It is apparent that the disposition of the State Land Act funds could stand some clarification, as it is almost impossible to read the law on the subject and determine what happens to the money. I think that all expenditures of these funds could well be studied to see if they might not be spent to the greater advantage of the State if they went directly to the General Fund for expenditure for beach, park and other items, but on a basis of consideration annually in the state budget.

In summary, the following suggestions are offered by the association based upon comments of its legislative committee members:

- 1 Amend the declaration of the Legislature to broaden the uses for water development projects to a true multiple-use policy
- 2 Qualify the legislative declaration to encourage repayment of funds, or matching of funds where appropriate, to secure as much mileage as possible from state moneys.
- 3 Provide policy or other means of evaluating the benefits of any enhancement proposal to insure the wise use of state funds
- 4 Amend the proposed legislation to provide that expenditures of state funds under the policy declaration are available to other agencies than the State alone
- 5 Amend the financial features of the proposal to eliminate the continuing appropriations and provide the recreation, fish and wildlife enhancement proposals for water development projects be submitted as state budget items by the appropriate state departments or agencies on an annual basis.

JOHN VAN ASSEN, Vice President of the Associated Sportsmen of California

I have listened with great interest this morning to many of the statements that have been made by the Water Resources Board, by the Department of Fish and Game, and others

I am quite discouraged and quite worried. I think there is a quotation in the Bible that says when everything was darkest, when darkness came over the land, the Lord lifted His head from the cross and said, "My God, My God, why hast Thou forsaken me?"

That is how I feel at the present time. I remember a few years ago that the Department of Fish and Game came out with a book called Appendix C stating many facts and figures of what would happen to our fisheries if we had barriers and different types of water projects.

I will only quote a few from memory, but I remember it stating that if certain types of water systems were used, we would possibly lose 50 to 90 percent of our striped bass, lose 40 percent of our salmon, and so on down the line to other migratory fish.

I note that the Water Resources Board definitely at no time could give us a definite statement as to what was going to happen to the migratory fish. I have noticed this at our meetings in Santa Cruz; they have been at our council meetings. The reason that the organized sportsmen are very, very concerned about this, is because of the past history of what has happened to our water and also what has taken place in the last few months.

I was one of those persons who, with the committee of organized sportsmen, went to the Governor. I also, on that particular day, contacted your chairman and we went through many of the facets of this California Water Plan. I know at that time that I was given the assurance that there would be a directive that would immediately be sent to the Water Resources Board and, gentlemen, I am still waiting for that directive. Also, at that time we were assured that there would be policy coming from the Governor's Office stating exactly to the point of saying what would take place. That has never happened.

We have had a history of water in the last few years in the State of California, especially in this valley that has never been right. It has been a long ways from being right, as far as conservation is concerned.

Let's go back a few years, 10 years ago, when the Friant Dam was first built. At that particular time, we were assured that we had nothing to worry about migratory fish. I agree, that was a verbal agreement and I can assure you that that was a mistake the sportsmen made at that time.

In 1945, the water was cut off. At the present time, the San Joaquin River is completely dried up and we have lost a fishery that at one time produced 10 percent of all of the salmon in this State. I assure you that we became very much concerned and we tried to get some answers. We contacted the Department of Fish and Game. At that time they said they would try to get some water from the Water Resources Board. After this particular hearing, we were assured that if we lost, that the department would go into litigation whereby the State of California would go to suit with the Bureau of Reclamation and try to get some water which was promised to us many years ago to restore fish on this particular river. At that particular time, I represented the Associated Sportsmen. I knew that we had 30 days to appeal that decision after it came out, which was not given to us. At the end of 30 days, when I came back from my vacation, there had been made no appeal. We had taken \$50,000, or \$70,000 of our license money and sent it down to China.

After many, many conversations of telephone calls trying to get a direct answer, it was suddenly called to my attention that the Governor had told the Department of Fish and Game to lay off; and so, consequently, a beautiful river was put out of commission.

So consequently, this legislation might not be the whole answer—it might not be the complete answer, but the Associated Sportsmen of California endorsed this 100 percent, the present bill for \$3 million for the enhancement of our fisheries.

I am a member of the State of California Regional Valley Pollution Board, and I can assure you that because of a lack of the water down the San Joaquin River, we have lost many, many, many thousands of dollars right here in the city alone. I wish that I had the time and equipment to show you some of the dead fish and wildlife which we have had recently because of the lack of that water.

LES ELLIS, Member, Fresno County Sportsmen's Club

I have before me a resolution adopted by the board pertaining to Assembly Bill No. 3838:

WHEREAS, The California Legislature has taken an increasing interest in matters affecting our fish and wildlife, and recreation; and

WHEREAS, There is an increasing need for the protection and enhancement of the fish and wildlife resources and to meet the recreational needs of this State; and

WHEREAS, Legislation has been enacted declaring the use of water for fish and wildlife and recreation as a beneficial use, giving protection to the water supplies needed for these resources, and calling for inclusion of fish and wildlife and recreational needs in the planning of state water development projects; and

WHEREAS, Many water projects would be brought about by passage of the California Water Development Bond Act; and

WHEREAS, It is only proper that such projects include all possible protection and enhancement of our fish and wildlife resources and for recreation, and

WHEREAS, The Governor of California has avowed a policy of maintaining, protecting, and enhancing fish and wildlife resources incident to and in connection with state water development projects for the benefit of all the people; and

WHEREAS, Assembly Bill No. 3838 as proposed would require in each water development project the incorporation of such plans and construction and the acquisition of such lands as would ensure the full utilization of the project for the enhancement of fish and wildlife and for recreational purposes to the extent consistent with other uses of the projects, and

WHEREAS, Assembly Bill No. 3838 as proposed would provide for the continuous appropriation into a special fund of not to exceed \$3,000,000 a year of State Land Act monies to the Department of Water Resources for the financing of such features for the enhancement of fish and wildlife and recreation, now, therefore, be it

Resolved and declared, That the Executive Board of the Fresno County Sportsmen's Club supports and hereby urges enactment of the legislation embodied in the proposed Assembly Bill No. 3838 provided that objectives and purposes proposed therein specifically include protection and maintenance of fish and wildlife and recreation as well as enhancement, be it further

Resolved and declared, That full support of this measure by the Fresno County Sportsmen's Club shall be forthcoming if the language of the measure ensures that provisions for the enhancement of recreation will not subordinate provisions for the protection, maintenance and enhancement of fish and wildlife such that all project monies could conceivably be expended within any one project for land acquisition or other physical requirements solely for recreation leaving no money at all for the other major considerations; be it further

Resolved and declared, That the Fresno County Sportsmen's Club supports the language of the proposed Assembly Bill No. 3838 ensuring that up to \$3,000,000 annually be appropriated to the Department of Water Resources in order to carry out the express purposes and intent of the legislation; be it further

Resolved and declared, That the Fresno County Sportsmen's Club urges that the financing and source of monies necessary for carrying out the purposes and intent of the proposed Assembly Bill No. 3838 be made an integral part and function of the California Water Development Bond Act in accordance with the intent of the Governor to urge legislation under this act at the 1961 Session of the Legislature which will guarantee a suitable pattern for maintenance, protection, and enhancement of wildlife.

"The foregoing resolution is adopted this 20th day of June, 1960, by majority vote of the Executive Board of the Fresno County Sportsmen's Club meeting in regular session. Signed, Richard Shay"

**MRS. RICHARD GLASS, State Water Chairman, League of
Women Voters in California**

As a national organization we support national policies and procedures which promote comprehensive, long-range planning for the conservation and development of water resources. We believe that coordinated planning, development and water management on a regional basis is essential. We also think that the federal government has a necessary role in financing water resources development but that state and local governments and private users should share such costs, as far as possible, based on the benefits received and the ability to pay.

The league consensus is that equitable financing requires water and power users to pay the costs of state water developments but flood control, recreation, and fish and wildlife protection and enhancement can be considered nonreimbursable costs to be borne by the general taxpayer. We think that recreation and fish and wildlife conservation are vital parts of any multipurpose project. Since they contribute to the general welfare of the State, they are a legitimate charge on the general taxpayer.

The emphasis in the proposed bill to incorporate recreation and fish and wildlife enhancement in the original construction of water projects is most desirable.

**MISS BLANCHE M. KRAL, Secretary, Inland Council of Conservation
Clubs of San Bernardino and Riverside Counties**

Utilization of water from the project must be on multiple use basis in all respects. Certain portions of reservoirs may be designated for fishing, swimming and skiing, and should not be allowed to intermingle. This should be spelled out by legislative policy. The multiple use concept should be further spelled out to the point that no one reservoir will be so designated as domestic water only and no other recreation provided. On the other hand pollution control shouldn't be forgotten.

Recreational, fishing and wildlife enhancement and project construction will be of little value unless access roads are provided and maintained. Project constructions may include said access roads but with the present access problems this point should be stressed.

Waterfowl should be given great consideration in certain areas that perhaps at present are wintering areas for the birds or future areas developed. San Jacinto Valley, Riverside County is a very old area for waterfowl, especially wintering area. Most of the marsh areas are gone with the exception of private hunting clubs. More area is needed for public hunting rather than private clubs.

All fish, wildlife and recreational enhancement along with uses of the water should be thoroughly spelled out and carried out.

**EUGENE BACIU, Representative, Federated Sportsmens Association
in Santa Barbara**

I believe your program for the enhancement of fish and wildlife is very good, also, I believe there should definitely be a file kept in Sacramento or some other designated place of all fishing and hunting licenses issued.

FRED SABELMAN, Representative, Northern California Wildlife Federation

The Northern California Wildlife Federation directors have agreed there is an absolute and immediate need to adjust the licensing arrangement of hunters in California.

At present, a prospective hunter can, for example, purchase several hunting licenses at various sporting goods stores, with appropriate deer tags and waterfowl stamps, without challenge or presentation of identification. Said hunter can take what is known as a legal limit of game, have it properly validated without further proof of identity and transport said game to any point in California for consumption or disposal.

For consideration by this committee, we respectfully suggest the following changes:

- 1 A two-fold, permanent-type hunting license to be issued acceptable applicants, who are residents of California and who fill all other requirements, by the California Department of Fish and Game.

- 2 Anyone desiring to hunt game birds, mammals and all wildlife in areas where hunting licenses are presently required, shall make application for said license on forms provided by the California Department of Fish and Game, to all sources of distribution presently issuing hunting licenses in co-operation with the department. Then applications must be mailed to the Department of Fish and Game in Sacramento at least 30 days before said license is expected, to allow checking of authenticity, as is necessary to establish the rate of false applications.

Said permanent license shall be complete with the name and current address of applicant, color hair, eyes, height, weight, date of birth, sex, and California driver's license serial number, if he has one.

- 3 Each permanent license shall be designed with space provided for change of address, which should be a part of the permanent record of licensee, on file with the original application, kept by the California Department of Fish and Game in Sacramento.

The subsequent licenses could then be validated by a stamp that could be purchased through the present agent system.

FRED SABELMAN, Representative, California Bowman Hunters and Field Archers Association

Because of the desire of the majority of the members of my association to participate in all phases of hunting in California, it is suggested that one license, and one set of deer tags be used by both riflemen and bowmen to allow the interchange.

We further proposed that all persons using bows and arrows for hunting big game in California purchase their permanent license and affix thereto a bowhunters permit stamp issued by the Department of Fish and Game at the cost of \$2 for the license year.

GEORGE D. DIFANI, Executive Secretary, California Wildlife Federation

I have been requested to present the following statement for the Fresno County Sportsmen's Club by Les Ellis, Director and Past President:

This letter was directed to the commission in reference to the trout policy, so it is before the Fish and Game Commission now for discussion and action.

Our executive committee reviewed the proposed "trout production policy" prepared by the Department of Fish and Game for the Fish and Game Commission to consider adopting at its meeting of December 3, 1959.

We interpret the proposal as restricting the annual cost of the trout hatchery program, not including fingerlings, to equal the annual revenue from the trout anglers through the sale of trout stamps.

We consider this amount to be in the neighborhood of \$675,000 based on the department's many surveys indicating consistently that half of the fishermen who buy a license are trout anglers, the total number of licenses being sold annually at present being about 1,350,000. One-half of this amount would be 675,000 or that many dollars being made available for the catchable size trout production program.

Our executive committee voted favorably on this proposal but feel that other gauges should be established for additional fishery programs.

"In other words, what are the plans, and to which extent will projects be undertaken for. (1) stream improvement; (2) lake improvement; (3) introduction of new species of game and forage fish; (4) fertilization of fishing waters; (5) specific projects to improve warm water fisheries, (6) specific projects to improve ocean fisheries, to name only a few.

If anglers paid in \$675,000 for trout stamps, they would've from necessity, had to pay in an equal amount for stamps to take inland fish other than trout. Shouldn't this amount be earmarked for what it was paid in for?

If the commission intends to continue the year-round trout fishing season in Southern California but only from May to October in the north, we object to the planting of catchable size trout except during the so-called summer trout season. The organized sportsmen of the State went along with the year-round trout fishing proposal of the Southern California sportsmen due to water conditions but with the exclusive understanding that no trout would be planted except during the same months that trout were planted in the north.

This has not been the practice and state funds paid in by sportsmen for the good and welfare of fishing and hunting on a state-wide basis are being used for the year-round benefit of Southern California trout anglers in contrast to six months for the northern trout fisherman.

This letter was read and unanimously approved by our board of directors on November 19, 1959."

Now, I would like to also say in closing that the California Wildlife Federation must take the responsibility for supporting and actually urging the enactment of the legislation to have this Booz, Allen and Hamilton survey. I think the fact has been brought out here and in

other hearings that the department has taken about 200 of the suggestions and is putting them into actual use and they are going to adopt them and I think that is pretty much proof of the survey's value. I have read the report and I am in hopes that our federation will take some concrete action on some of the things other than the 200 recommendations that the department have already adopted. There are some other good things in it. There are some things I am sure our organization will not buy, but I think that is rather normal also. But by and large I think that personally the survey was worth what it cost and I am only hopeful that our group can come to the final decision or any decision in reference to some other decisions that are going to be made or that you people are going to discuss. Vince Thomas has mentioned that he wonders whether we have taken this thing in stride and whether it is worth what it cost. I would like to answer that and I think I have pointed out what has been done and the report as Mr. Gray gave it this morning in reference to the recommendation of the fish eradication program in warm water areas is being adopted. It is something I am sure all our councils are in favor of and that alone is to get that movement started and get it really moving and that is something that is absolutely necessary and we have the support of the Booz, Allen and Hamilton people and the consultants were employed to come here from other states, experts that determined those things on the basis of on-the-ground surveys.

EDDIE BRUCE, President, California Wildlife Federation

It has been resolved by the California Wildlife Federation that we support the proposed Fish and Game Commission policy on trout hatchery programs. The annual cost of the trout hatchery program for catchable trout and sub-catchable trout, not including fingerling trout, should not exceed the income from the trout stamp sales to trout anglers during the prior budget period.

As to the pheasant program, we support the retention and maintenance of the put-and-take adult pheasant planting in the Zone B pheasant area with the cost not to exceed the revenue of pheasant license money collected in the prior budget term and that the State Game Farm production of put and take adult pheasant planting should not exceed the output needed to attain the revenue level.

RAY E. WELSH, President, Sportsmen Council of the Redwood Empire

We are not and do not profess to be fiscal specialists; we are not agency administrators, and we are not fish and game managers. We are, however, representatives of a major segment of the public that is concerned that fish and game and the other natural resources of California not be overlooked when problems fostered by growing population are considered. We are able to state in broad terms some of the steps we feel must be taken if these resources are to be properly managed in the future and although we are laymen in a sense we feel that we are able to speak with some authority because we represent that segment of the hunting and angling public which is banded in rod and gun clubs to work actively for the preservation of these resources. We feel that accelerated work is essential to the maintenance and enhancement of our anadromous fisheries. We feel that programs must

be developed to insure the place of fish, game and recreation in the State's water development program. We feel that there must be an increased emphasis on range management, brush burning and deer habitat development. We feel that pollution of the public waters must be controlled and eliminated. We feel that the Fish and Game Department should be administered on a pay-as-you-go basis definitely.

REG RICHARDSON, Representing the San Diego County
Wildlife Federation

The part of the State that I represent is greatly dependent upon the artificial so-called put-and-take programs. As to the question on needed expansion this put-and-take program will need to be increased with the public demand which is indicated by the increased licenses. We know that our part of the State of California is probably growing faster than any other part. People are coming in by the droves and it is recognized that there should be some cutbacks in some of the fish and game fields in the State however. We, in our area, are certainly always looking for new activities that may become available to our hunters and fishermen and that is because we have so few natural ones that for instance the introduction of this Florida bass may be a terrific impetus to a particular area that we have. It will be the sort of thing that they are looking for and it takes a lot of work and of course it is costly.

Our group hasn't gone too much into the cutbacks that we feel should be made. If the cutbacks have to be made naturally we go along with that where the money in turn can be used for increased natural habitat uses like stream improvement and the sort. We would be willing to share some of the revenue from the trout stamp to be used for stream improvement and lake improvement.

ARDIS WALKER, Representing the Sportsmen Council of Central California
and the Kern River Fish and Game Association

While our council advocates habitat improvement and stream rehabilitation to maintain the natural trout fishery, still in existence in the more northern Sierra, we are faced with the overwhelming pressure of the millions of residents of Southern California who already have depleted many of our streams to where a catchable trout program must be maintained if such streams are to meet the minimum needs of those anglers. Likewise, while we worry about deer management and habitat improvement in the Sierras to the east, we must also consider the question of maintaining a satisfactory ocean fishery on our western boundary. Because of these varied problems and the ever-increasing demands to be met with the limited resources of our area, we cannot vision any general reduction in the cost of maintaining the present Department of Fish and Game program. On the contrary, we feel we must face the fact that increasing demands of an expanding population can only mean expanded services at greater costs. Fortunately, for the sportsman he pays his own way through license fees and fines which tend to increase automatically through increased activity.

Our area in general offers poor natural pheasant habitat and an ever-increasing enthusiasm on the part of mounting hordes of pheasant

hunters. We feel that this program should be continued insofar as the hunters are willing to pay for it.

We feel that many of the controversial aspects of the fish and game programs are based to a great extent on confusion or ignorance. In every case the sportsman is buying something. In most cases he has no clear idea of the cost factors related to his commodity. In other cases he simply does not know what he is buying. For that reason we are willing to pay for a sound program of public enlightenment. In all of the fish and game investments, however, we are duty bound to scrutinize them as we would our own business ventures. In fact we feel that each sportsman who purchases a license or a tag is a stockholder in the business of fish and game. We look to the legislative representatives as we would to a board of directors and to the department as we would to employees of the corporation. Because of the interest of the committee in our problems we have confidence of the sincerity and ability of our board of directors. We are convinced of the high level of dedication that goes into the daily services performed by the department personnel. However, like all persons engaged in private enterprise, we are desirous of the greatest possible dividends at the lowest possible cost.

WALTER SHANNON, Director of the Department of Fish and Game

The downward trend of hunting licenses experienced in 1957 and 1958 appears to have leveled off on the basis of the record of the past six months. A total of 501,931 hunting licenses were sold, an increase of 572 over the same six months of the preceding year. An increase of 1,271 junior licenses and a decrease of 923 adult licenses accounted for slight revenue drop of \$1,388, however. Deer tags jumped 7,585, bear tags increased 1,716, but pheasant tags dropped 8,259. Angling licenses continued to increase over the previous year by 72,953. We issued more free licenses, too, for a total of 16,248. Reported sales of angling license stamps were off 16,557; we anticipate that this deficit will eventually show an increase when reports are all in because there are about 85,000 more stamps unreported by license agents at this time than at the same time last year. In summary, we believe that we will see a slight increase in hunting revenues for the first time in three years and a continued steady increase in angling revenues. In relation to so-called frozen funds we have approached this on the basis that such funds required to cover the proposed budget which are duly appropriated by the Legislature become authorized by the Budget Act. This approach was adopted after consultation with the offices of the Legislative Analyst and the Department of Finance. In relation to our 1960-61 proposed budget and its relation to the so-called frozen funds, we do not anticipate that any license increase would be necessary in the foreseeable future to provide for the anticipated needs of a sound wildlife conservation program. We estimate a working surplus of \$4,269,861 in the Fish and Game Preservation Fund on June 30, 1960, the end of the current fiscal year. Of this, \$3,734,494 comprises the so-called accumulated frozen funds and \$535,367 of so-called unfrozen working capital. If we do not use the frozen funds, we may have to cut back in some of our programs. In reference to the financial crisis of the Marine

Research Committee, this is being met during the current and coming fiscal year by reducing programs back to a level of expenditure within the anticipated income. During the previous two fiscal years, revenues were greater and the committee materially expanded their program utilizing accumulated surplus. The Marine Research Committee has reported to the Director of Fish and Game that a return to its expanded program is desirable, but not possible in view of its reduced income. It is our conclusion that the ocean sports angler is receiving attention and service commensurate with the general level of revenues which he provides. The department's 1955 economic survey based on the written interviews of a random sample of license buyers indicated that 11.7 per cent of all sport angling license buyers fish in salt water only. There is no evidence to indicate that this percentage has changed materially since 1955. For the 1959-60 fiscal year, 11.7 per cent of the estimated angling license revenues totals \$525,513. In relation to the matter of using general funds for fish and game purposes as the problems of wildlife conservation have become more complicated, the Legislature has placed increasing responsibilities on the Department of Fish and Game such as pollution control, water projects, conservation education and others. We believe expending Fish and Game Preservation Funds for such purposes is appropriate and justifiable. The protection, maintenance and enhancement of California wildlife is putting an ever increasing load on our limited revenues and it is difficult to stretch our dollars far enough to cover all the problems adequately. Additional funds would be desirable, however, we recognize the present demand on the General Fund and it appears doubtful if such funds will be available. We previously broached this matter with the Department of Finance and they have generally felt that we should stay within our existing revenue rather than to try to call on the General Fund.

**N. B. KELLER, Principal Administrative Analyst,
Office of the Legislative Analyst**

With reference to the so-called frozen funds, as you recall the bill which increased the various fees included provision that 50 percent of the increase would be kept in a separate account as it were and would not be subject to expenditure except by specific appropriation by the Legislature. Of course, each time that a budget is proposed, and it contains any part of this frozen portion, and the Legislature passes it, this constitutes an approval of the appropriation of the frozen portion, as we see it.

At the rate that the revenues have been increasing contrasted with the rate at which salaries have been going up, with the annual increases the normal merit salary adjustments for salary ranges, increases in cost of all the services that the department obtains and there is no increase in level of service, no new programs, no additional positions, and if the revenue increases no more than has been projected in the past, it is very possible that we will reach the saturation point in the near future. That is, you will be expending every nickel the department takes in. If on the other hand anything is added to services in any way you are going to start to dip into the surplus and the de-

partment will be operating in essence on a deficit basis. You will be spending more than you take in. Realistically, we would have to assume that the department in the 1961-62 fiscal year would not be before the Legislature asking for one single additional staff or any increase anywhere to continue on their basic level and keep within their revenue basis. Essentially, if they are to stay within their revenues, they would have to come before the Legislature in 1961-62 with essentially the same level of service they are asking for now.

There have been examples of state agencies remaining status quo and never requesting additions to their programs from the Legislature. There have been some agencies that have remained static and oddly enough there have been a few who have been cut back. Actually, the fish and game program has expanded a great deal. I think a good part of their increased expenditure has been purely salary adjustments; just increased costs of doing business. This is one of the unfortunate parts of a fixed form of income in which you have a fixed fee irrespective of what it costs to provide a service. In the case of almost all the other state services, its income is more or less based on the total economic level of the State. You have in a sense a percentage of the total income of the citizens of the State in the form of sales tax, etc. In the case of an agency like the Department of Fish and Game you have a fixed fee and you cannot anticipate that a great many more people are going to make use of these facilities each year. The department is caught in a kind of nutcracker. On the one hand, the salaries keep getting pushed up each year. Nearly every year there have been salary increases. Certainly prices for everything—goods, services, supplies—keep going up.

Unless you want to begin to use up this surplus, it will be necessary for you to maintain the status quo in the foreseeable future in the Department of Fish and Game programs. It ought to be pointed out that the present surplus of the so-called frozen funds represents just a fraction of their annual cost of operation, less than one-half at the present time.

I would like to make the point that if there is any substantial expansion in the programs of the department in 1961-62, they will begin spending more than they will be taking in and this is simply not a good policy on the face of it. Generally speaking, a substantial part of the special frozen fund ought to be preserved as a cushion. A situation of emergency might arise. There might be unexpected drops in the revenue and a drop in the revenue is not going to drop a program or curtail positions. They will be there just the same; they will have to be supported; and I think from a financial standpoint it is wise to keep a certain amount of cushion. I am not going to argue that any specific figure is necessary, but I feel that this is the time when you will have to start to think of which way you are going. Are we going to start to use up some of the surplus or are we going to start to think in terms of another round of fee increases?

JOE BORDEN, Representative, Trinity County Sportsmen's Association,
(Committee made up of Harold Wilson, James Lee, Roy Gallagher,
Fred Olsen)

We feel that too many predatory animals interfere with the development and production of wildland recreation and livestock of our area. Trinity County is coming here today not so much to criticize, but to ask for help. We are a sparsely populated area. We are in many respects a poverty area. We do need help from the outside. There has been a tremendous increase in the number of coyotes in our area and we feel that something should be done about it.

Mr. Ed Wagoner, president of the Humboldt County Wool Growers Association, reports a similar problem in Humboldt County. We have reports from ranchers in Trinity County that for three years in a row we have lost practically 100 percent of our lamb crop. This is forcing some of our people out of business. We would like to ask how much money has been appropriated to Trinity County as a result of the passing of Resolution 40.

Mr. Shannon, Director of the Department of Fish and Game, testified at this point that, at one time, we had a predatory animal control program that ranged from between \$200,000 and \$300,000 for some 30 or more employees as full-time trappers. We reduced that program because in line with modern game management practices it was determined through investigation that we were not getting our money's worth. It was a situation where the expenditure of money was not producing a return in terms of game. Now granted that the farmer has a problem in relation to sheep and cattle, but the primary responsibility of the Department of Fish and Game is to protect the deer and the wild game and not in relation to the farmer's cattle and sheep. The US Fish and Wildlife Service generally assumes this responsibility. The Booz, Allen and Hamilton people report that the use of predatory control should be undertaken only when our studies show that game is being damaged severely. Predator control should be considered a minor management tool to be used only when and where studies show that game is being seriously damaged. We cannot show in California where game is being seriously damaged through lack of predator control.

**STAN SIMIDIAN, President, Hunting and Fishing Improvement
Club of Central California**

We are in favor of the self-supporting catchable trout program. When we say that we mean the money derived naturally from the trout stamp sales. We also believe that much more emphasis should be given to habitat improvement with cutbacks in the catchable trout program in the future. We feel that much more consideration should be given to the recommendations of the Booz, Allen and Hamilton Report.

On the pheasant policy which I will jump to now, we are in favor of cutbacks at this time, possibly a reduction of four co-operative areas. We are not in favor of maintaining two in the south and none in the central or northern part of the State. We believe that a better fishery can be maintained by habitat improvement over a long period of time. I believe that it is the rule that many of your resort owners throughout

the country know well in advance of when the trout will be planted. They advertise this fact and you may say that is to be expected. There are many cases where people go down, catch a limit, go home and rush back and catch another one. That is taking place all over the State. I know of one instance in Tuolumne County where the fish and game truck was in town, I believe somewhere just before noon. Practically all the stores in town closed down and by the next morning there wasn't a catchable trout to be had in the planting location. These aren't the exception, but rather they are very common happenings. We were happy to see that legislation requiring a report such as the Booz, Allen and Hamilton investigation was passed last year. We were all curious before that as to what the Department of Fish and Game was really doing. This fact has caused many sportsmen throughout the State to doubt the department's word. We felt that when we inquired of the department of what it was doing we got nothing but a run-around, so the Booz, Allen and Hamilton Report was something that we sorely needed. We believe that the future pheasant hunting lies in the small farms. We conducted a survey, not an extensive one, but a survey by having individuals of our organization talk with farmers who were not members, promising that their names would not be used. They asked the farmers why they have no pheasant population to speak of at all on their acreages when in the past, a few years ago, they had several. And the answer generally was that, "Well, we got sick and tired of rearing pheasants for sportsmen." The simple answer is that it all amounts to this, that they in turn were out on the plow or out in the field and they killed the pheasants. It appeared to us that the farmers favored planting by the Department of Fish and Game, but it must be realized that the Department of Fish and Game cannot create pheasant habitat.

We are in favor of maintaining four co-operative areas with planted birds, at least two to be in Central and Northern California.

MR. GRAY, Representing Booz, Allen and Hamilton

Pursuant to Senate Concurrent Resolution No. 126 the firm of Booz, Allen and Hamilton, management consultants, made a survey of the Department of Fish and Game and subsequently made a report to the Joint Legislative Budget Committee on December 8, 1958. As a general conclusion, it can be said that in the opinion of our survey team the department's concepts of wildlife management with few exceptions are sound and up to date.

Our quarrels are not so much with what should be done, as with why it is not being done. There is much detail to be read on this score in each of the wildlife management chapters of our report to the Joint Legislative Budget Committee. From our analysis of the wildlife programs, we derived the major conclusion that the greatest opportunities for improvement lie in the areas of administration per se and in the effect of administration on departmental unity and public relations.

We were retained to make an effective survey productive of practical and constructive results, which was our endeavor. In making it we had the highest degree of co-operation from all with whom we have dealt in the department. We had excellent co-operation from individual sportsmen and from sportsmen's groups. Our survey team members in the

field benefited greatly from the interested comments of hunters and fishermen.

If there is one thing that is overridingly apparent in fish and game matters in California, it is lack of unity. There is lack of unity in the department itself. Department people in the field do not agree with the department's actions nor do they agree among themselves and without unity within, unity without is difficult to achieve. The disagreements and criticism by department personnel filter quickly into the sportsmen's groups.

The 1953 decentralization within the department to regions was a sound one. It is not yet fully digested in that there still is not uniform understanding of who is supposed to do what, but this can be cured. We proposed a further decentralization. We believe it will improve operational efficiency and further departmental unification. We proposed creation of 22 districts in the State. They should be strictly units, field units of 10 to 15 men under district management. The field supervisory authority now exercised by functional supervisors at the regional headquarters would be transferred to the district managers. Thus we move authority closer to where the action is. The decentralization to districts permits the elimination of one region, with supervisory authority exercised at 22 local points in the State instead of at five regions. A region can be larger because there is less need for travel. The elimination of one regional headquarters, plus a few other economies, more than covers the cost of setting up the decentralization organization.

There is another type of control which warrants discussion, this is compliance control. Some effort but not nearly enough has gone into manualization. The department badly needs to manualize its organization, policies and procedures in order to standardize them throughout the State. It then needs a scheduled field inspection by headquarters' personnel to check for compliance. During the survey, several cost reduction opportunities were developed. Reduction of number of regions and the decentralization plan, \$186,000; consolidation of the game farms, \$80,000; reduction in operating costs of fish hatcheries, \$310,000; adoption of a new license procedure, \$10,000; dissolution of the wildlife conservation board, \$40,000; assignments to the department of responsibilities of assistant to the commission, \$15,000; for a total of \$641,000 a year. There is a possibility that the adoption of the new licensing procedures that we propose can increase department revenues through reduction of license agents' commissions. That workload of license agents would be reduced and, consequently, reduction of their commission can be considered. Another type of cost savings is the future savings possible through increasing the natural fish production of California lakes and reservoirs as a much more economical alternative to increase the artificial fish hatcheries.

CHARLES BOHRMANN, Representative, Associated Sportsmen of California, Inc.

The Associated Sportsmen of California have gone on record as supporting the contention that all so-called "put and take planting" programs must be on a pay as we go basis. By that we obviously mean that the total cost of each of these programs must remain within the

sums provided by the specific license moneys earmarked for these programs

For the sake of ready reference and understanding of these A.S.C. contentions, I have compiled for the A.S.C. a recapitulation of the Department of Fish and Game expenditures sent out with your letter of December 1959, which will serve as a basis of what constitutes actual costs

Perhaps I should qualify it and say what we believe constitutes actual costs.

We have been informed that about one-third of every dollar deposited into our fish and game preservation fund goes for patrol, law enforcement

It then becomes obvious that for every dollar of fish and game funds spent, we must deduct 20 cents for general overhead and retirement, as per this distribution I gave you, and 30 cents for patrol, because these two functions consume one-half of our expenditures.

The A.S.C. did recommend to the Legislature a trout stamp to finance the catchable trout program. The Legislature actually provided two angling stamps. So today we have an angling license consisting of three parts.

a. The basic \$3 license which entitles the holder to angle in the ocean and to take frogs.

b. The first additional stamp which entitles the holder to angle in inland waters for warm water fish and anadromous fish.

c. The second additional stamp which entitles the holder to take all fish in this State, including native and catchable trout.

Since the stamps issued for use under (b) and (c) are identical, it is now impossible to determine accurately the additional license income provided by the Legislature for warm water and anadromous fish, and the additional income provided for the catchable trout program

It is therefore respectfully recommended that your committee give thought to legislation needed to provide two different stamps, one type for the inland fishery and anadromous stamp, and another type for the so-called trout stamp. Then after deducting the fixed charges for overhead we will know how much additional money is available for each of these separate functions for which the Legislature provided special funds, and expenditures then can be kept within such income.

It is your information that the estimated revenue for the raised trout program (catchable) was \$733,048. Then, accordingly there remains only \$366,524 after deducting 50 percent for overhead, retirement and patrol.

There appears to be only two basic justifications for planting catchables:

(a) To provide a limited artificial trout fishery in the water-short portion of this State where stream conditions cannot provide wild trout.

(b) To provide a definitely limited artificial trout fishery in the vicinity of densely populated urban area, like Lake Merced, San Francisco.

We believe that planting catchable trout into the streams of the water-abundant portion of California is not in the interest of an abundant trout fishery. In these streams, dollars which are spent to better the wild trout fishery will produce more and better trout over a longer period of time, than the same money spent on catchable trout plantings, which are known to be short-lived.

In fact, it is deemed that planting catchables in the water abundant portion of California is actually state competition with private enterprise trout farms.

Furthermore, we believe that it must remain the primary function of our Department of Fish and Game to provide needed habitat betterment to increase our fisheries by natural propagation, excepting perhaps anadromous fish blocked by dams. In the case of trout we recommend, but do not limit to, rough fish control, fish food studies and enhancement, stream flow maintenance storage of water, artificial spawning areas, and so forth.

When we realize that recently our Director of the Department of Fish and Game told us that there are about 26,000 miles of "fishable streams" in California, and if we deduct therefrom say 6,000 miles as warm water streams and sloughs, that will leave us about 20,000 miles of streams where natural propagation of trout can be enhanced.

California's fish and game program was published in 1950. On page 41, Dr. Albert Hazzard stated: "It would seem good common sense to find out more about the source of 88 percent of the fisherman's catch. If the production of nature could be stepped up only 12 percent it would equal the total hatchery production of that year (1950). Considering the vast improvements in agricultural production, due almost solely to research, such a goal does not seem out of reason." California paid for that expert opinion, but we do not appear to be utilizing it in our 20,000 miles of trout streams today.

To date practically nothing has been done to enhance and better the natural propagation in these 20,000 miles of trout streams, except the treatment of the Russian River and some smaller streams. As early as July 1955, the A S C directed Resolution A S C. No. 55-23 to the Department of Fish and Game asking for study why wild-hatched trout do not survive in streams which are now predominantly populated with rough fish. In November 1956, Resolution A S C. No. 57-11 asked for rough fish control in the Feather River. Due to the lack of department action both of these resolutions were restated at the September 1959, convention of the A S C, because we believe that more permanent benefit will result from habitat improvement, than will result from dumping short-lived catchable trout into them.

These resolutions are based upon a study made by Taft and Murphy of the Department of Fish and Game and published in California Fish and Game (quarterly), Volume 36, issue of April 1950. I here would like to read into the record some pertinent excerpts from this article. On page 147 we are told that the squawfish lives with the black bass and catfish at the lower elevations and at middle elevations with the trout, and many of California's streams have become warm through lower summer flows and reduced stream sidecover. This change has been caused by erosion, diversion, heavy flooding, and fire. As the con-

sequence of the changed physical conditions which now favor them, squawfish and other rough fish have displaced trout in many stretches of such streams, though without competition trout would survive in these stream sections.

And it is on this basis, on this statement principally that we base our request for the rough fish control in the food rich low elevation streams

There is also another statement here, "The migratory behavior of the squawfish has led to the suggestion that their numbers in a stream could be reduced by constructing a barrier to up-stream migration, a barrier that would stop the squawfish but allow migrating trout and steelhead to pass. Several specific proposals have been advanced by various biologists, and at least one experimental barrier will no doubt be constructed."

To date—this was published in 1950—and to date I have no knowledge of any such barrier, artificial barrier being constructed. To demonstrate the predatory aspect of these squawfish which are native members of the carp family in our streams, "In Cultus Lake, B C, the squawfish was found to be an important predator. They found that young red salmon up to a year of age are the most important food of squawfish more than 4 5 inches long, except during the period from May to September." After they controlled the squawfish in Cultus Lake, this increased the survival of red salmon from planted fry to downstream migrations by three and one-tenth times. In other words, where only one used to go down before, four downstream migrants went downstream after the squawfish were controlled. We know we cannot eradicate the squawfish because subsurface springs in our streams provide shelter for them during this treatment process and it is acknowledged that they cannot be eradicated, but they can be controlled and once they are controlled we may find effective means of keeping them under control in order to derive the benefits which have been demonstrated here by these other people.

The data for the squawfish in the Sacramento and Columbia strongly suggests that they compete for food with trout and prey on their young. A more subtle realm of competition is for space. All organisms require "living room" and it is apparent that a stream choked with squawfish, which occupy much of the same niche as trout, does not offer much "living room" for trout.

Therefore, on that basis, whereas a coyote or a panther is simply a simple predator destroying game for food, the squawfish does the same thing to the trout. He eats the young trout, but he also eats the food that the trout must have in this stream and he competes with him for living space and therefore he is a far more dangerous threat. He is a triple threat instead of a single threat.

There is further support for rough fish control in trout waters in the Sports Fishing Institute Bulletin No. 97 dated December 1959. On page 2 we read, "Three months ago the Back Fork of Elk River in West Virginia contained tons of trash fish and a few trout. Today, according to biologist Richard Wahl, the river contains about two and a half tons of trout and almost no rough fish." The article further

states the river was treated for removal of all fish last September and two weeks later was planted with 83,000 trout fingerlings. Without rough fish competition these trout should range from 6 to 10 inches long next April. The entire cost of the rehabilitation, including labor, materials, supplies, transportation and fish for restocking only cost \$4,000. Had they stocked 86,000 catchable trout next spring, they would have cost \$20,000. In other words, you are receiving a permanent benefit, or we appear to be receiving a permanent benefit, a more permanent benefit for one-fifth of the expenditure of money when the streams are treated because I really believe that our Department of Fish and Game is efficient enough that they can do as good and as cheap a job as was done in Virginia.

While the above ASC resolutions only refer to the Feather River, this rough fish control applies to many hundreds of miles of food rich low- and mid-elevation streams in California, which today are principally dominated by rough fish. To list some of these streams for the records, I submit: the Upper Sacramento River, McCloud River, Pit River, Squaw Creek, Cow Creek, Clear Creek, Tomes Creek, Mill Creek, Deer Creek, Stony Creek, Chico Creek, Butte Creek, the Feather River, Lower Sacramento River, Yuba River, Bear River, Cache Creek, Putah Creek, American River, Consumnes River, Mokelumne, Calaveras, Stanislaus, Tuolumne and Merced Rivers and others farther south, as well as probably some of the coastal streams in addition to the Russian River.

When Mrs. Davis' bill to close streams after planting was heard, the chief of the inland fisheries branch stated that this bill is proposed by resort owners who demand these plantings of catchable trout. It is respectfully submitted to this committee, that the trout anglers pay for these catchable trout. That if catchable plantings are terminated in the water abundant portion of this State, these resort owners can set up their own private enterprise artificial fishing and also derive a profit from such private enterprise, when the State ceases to compete by planting catchables.

If two types of stamps are used, that will provide additional funds for our migratory salmonids, which must have more aid and study if they are to remain an important part of our commercial and recreational fisheries. I will digress for a moment and add that we must learn how to adapt these migratory fishes to the impact of our civilization in order to perpetuate them for posterity and retain them as a necessary resource of the State of California.

The segregated stamp funds will provide more money from recreational licenses. In 1956 the department reports show that about 88 percent of our salmon were taken commercially and about 12 percent recreationally. Then perhaps, more financial support for salmon fishery betterment from the commercial fishing industry may be in order to attain more salmon accomplishment. It appears obvious that the privilege tax for commercial salmon as set up by Section 8045-b and which is earmarked under Section 8055 for salmon propagation, should be increased in order to finance the increase of needed aid and study for salmon propagation. As this tax only applies to salmon landed in California, perhaps legislation should be introduced to apply a privilege

tax also to salmon shipped into California. This would seem a fair tax, because a large portion of California spawned salmon are taken in the northern states which ship salmon into California.

As early as July 24, 1955, after the study of the Chet Hart report, the ASC directed resolution ASC 55-22 to the Department of Fish and Game. This requested the commission use the information in the Chet Hart report as a basis for their pheasant program; that the game farm production of pheasants be reduced to 50,000 birds the first year and to 35,000 the second year, in order to see what the results will be. This was not done. This resolution was reaffirmed at the September 1959 ASC convention to support the statement of the director that the game farm program should be reduced. This constitutes ASC support for the reduction of the pheasant program to at least a pay as we go basis. For years the ASC pheasant committee has recommended habitat improvement in lieu of planting put and take pheasants in the Zone A area.

At this point may I very respectfully point out to you and through you to your committee, that when I have presented ASC recommendations to you I am not dividing the State of California into Northern California and Southern California on trout or pheasants. On the trout I referred to the ecological condition whereby I speak of the water as abundant and water short portions of the State of California upon which our wild and catchable fisheries must be predicated and in the same way on this pheasant program I am not referring to an arbitrary geographical division of the State, but rather on the basis of our pheasant populations and the need for an artificial program which might be needed to afford a certain amount of area sport where these birds are not thriving.

We have pointed out that large scale distribution of gizzard gravel to fence corners and to drain and irrigation ditch banks will reduce road mortality of pheasants. That is up in this valley on our sedimentary soils where they must come to the side of the road for gizzard gravel. We have pointed out that in April and May when most fields are plowed up there appears to be a shortage of nesting and feeding area. That the right of way easement area of irrigation and drainage ditches and flood control levees might be leased and put into food and cover crops for pheasants, so increasing the carrying capacity of that locale to far better advantage than to plant hatchery birds.

We have wondered if Section 1529 which requires that pheasants planted on other than public lands be planted where they will receive adequate protection and be most likely to thrive and multiply, we wonder if this section does not specifically forbid put and take pheasant planting on lands other than public lands and on this we have reference to what we call co-operating farmers. Where a farmer accepts a plant of put and take birds from the Department of Fish and Game and he posts his property with a furnished sign "Hunting by Permission Only," very obviously he will give that permission to his choice friends and when the average Joe Blow hunter comes along he will say, "I am sorry, pal, but I am filled up. I am to the safe limit of my area." And it actually becomes just a nice little private pheasant subsidy and we don't believe that that should be done in the Zone A area.

We should not increase the pheasant population there. If this man who already owns the property wants to provide his friends some better pheasant hunting, let him do a little something for the pheasant on his property. Let him practice a little habitat improvement on his own. Let him leave a little seed for them, leave a little nesting area and he will have the same thing without it being at the expense of the average pheasant hunter who does not share in it.

It is the earnest recommendation of the ASC that the Department of Conservation Education be not curtailed, but rather expanded so it will provide more audiovisual public education by movies to schools and sportsmen's clubs and other interested public groups. By this we can obtain the conservation education which my predecessor felt was so necessary to go to groups and it might be advisable to put a little byline on the hunting and fishing regulations that such educational matter is available because he appeared to feel that he did not know those things were even available.

Now, practically every hunter and fisherman reads the regulations and if there were just a little paragraph on there giving the name and address of whom to contact for some of this audiovisual education which is so much in use in our schools now and even in some industries, because it is so effective, I think the department will get its program over a lot better than they are doing now. And that is the end of my recommendations on that program.

We heartily concur with the Booz, Allen and Hamilton Report which states that other financing for this should be investigated, and the Booz, Allen and Hamilton Report also tells us that the Water Resources Board furnishes services to prospective projects and diverters and they reimburse them for it.

In fact, when I testified before the State Water Rights Board on the Middle Fork of the Feather River, the Associated Sportsmen had to pay for recording my testimony there, so they are on a reimbursed basis on those things. They are simply handling a liaison.

That is exactly what the Department of Fish and Game should do in connection with these projects. They should handle the liaison whereby the fishery requirements which they must support by evidence and not by opinion, shall be set forth by the department at the expense of the diverter or the project. That is what we recommend.

It is our recommendation that all special functions provided in the California Fish and Game Code shall at least be self supporting from the licenses and/or fees derived, after overhead and patrol, and so forth, have been deducted, in order that there will be no unfair deficit paid from the other income to the fish and game preservation fund.

And I list the Marine Research Committee, the Marine Fisheries Commission, kelp bed investigations, kelp harvest and commercial activities. Under commercial activities we have domesticated game breeding. We have commercial hunting clubs and we have pheasant clubs, both commercial and private, and it has always been a very debatable question in the past if the licenses and fees set for the above groups are adequate to fully cover the cost of the services and patrol rendered to these facilities by the department.

It is therefore respectfully proposed that the department should be required to keep a full itemization of the time, cost and so forth of all services, inspections and patrol, overhead and retirement pro rata expended on these facilities each year in order to assure that these facilities pay their way.

In addition to the above, it must be fully obvious from past reports, that in the Zone A pheasant habitat area, these pheasant clubs harvest more wild birds than their own planted birds. Therefore, since they operate under longer season and far greater bag limit than the licensed hunter, it would appear only fair that these pheasant clubs, both private and commercial in the Zone A area pay a privilege tax into the general pheasant fund of at least \$1 for each native bird they kill on these areas, to compensate the resource for their special privilege extended season and bag limit.

This shall not apply to pheasant clubs in the Zone B area, because if they can set up natural propagation in the B area, they are fulfilling the basic purpose for which the California sportsmen originally supported the "game management law" in the late 1930's.

I don't believe I have to sell anyone on this committee on the need of fish screens and the fact we are losing a lot of migratory fishes in our diversions in some years. It does not exist every year.

A great loss does not exist every year. Under present law one-half of the cost of screen construction plus one-half of operation and maintenance is paid by each of the Fish and Game Preservation Fund and by the diverter, and in case of diversions where the diverter already has paid for a screen now not operative, the diverter has discharged his legal responsibility, and the full construction cost must be borne by the Fish and Game Preservation Fund.

In addition to that, the diverter not only must provide the site for the screen, and the owner of a dam the site for a fishway, but they also must give the State a signed "save harmless" statement, whereby they appear to assume full liability in connection with these respective structures. If this is a true statement—I am merely repeating information given to the A.S.C., then an inequity exists, which must be resolved by the Legislature as a primary step toward stopping diversion losses of salmonid fishes.

It is deemed by the Associated Sportsmen of California that it is an economic impossibility that one-half of the new construction, plus full construction of replacement screens and one-half of operation and maintenance of all fish screens, can be paid out of the Fish and Game Preservation Fund and leave sufficient residue for even bare minimum operations of all of the other essential functions of the Department of Fish and Game.

These screens, like the water project and water quality studies, appear to be another instance where the present law requires the license buyers to protect a resource against conditions beyond their control. This we deem to be another inequity requiring legislative remedy whereby these screens must be constructed, operated and maintained by funds other than the Fish and Game Preservation Fund, under the paid supervision of the Department of Fish and Game in a similar

manner as water project sponsors pay for the services of the California Water Resources Board who work with said project sponsors.

No one denies a diverter a fair share of the public resource of water, but it is against all basic justice to appear to so license said diverter to destroy the public resource of fish in order to provide water to such diverter for profit.

From the foregoing, it can be readily seen that our diversion screening program is at the same stalemate where it has been these past 80 years while untold fishery losses have been wantonly wasted due to lack of remedial action. These fishery losses have caused a severe financial loss to the economy of this State. It obviously is a stalemate which can only be resolved by legislative action. It is for such remedial legislative action that I am appealing to you and to your Assembly Interim Committee on Fish and Game, not only for the Associated Sportsmen of California, but in the name of all users of our California salmonid fisheries, both recreational and commercial, who want to see this resource increased by natural propagation.

When it is realized, that the record appears to show that today there only remains 5 percent of the original 6,000 miles of Central Valley's spawning area for salmon, we obviously have no downstream migrants to lose in diversions, if this fishery is to remain abundantly productive, and a major factor in the great economy of this State of California.

Therefore, it is most respectfully presented to the thinking of you and your interim committee that this stalemate may be resolved by a subcommittee of your interim committee. It is earnestly believed that in low water years when the migrants move downstream slowly, our diversion losses are astronomical. This may account to some extent for the known and recognized fluctuation of the salmonid fishery population which in years of low productivity is a serious hardship upon the commercial fishermen as well as upon those who invest their money to cater to the recreational anglers for these fish, also the poor license buyer.

The Marine Research Committee is set up by Sections 725 to 732. It is financed by a special privilege tax under Section 80406. No allocation of Fish and Game funds to this committee is shown in Mrs. Davis' report. Does this committee pay the salaries, expenses, retirement, compensation, insurance and headquarters overhead of Fish and Game personnel serving this committee?

The Pacific Marine Fisheries Commission is set up by a compact under Section 14000 of the Fish and Game Code. The budget recapitulation shows an appropriation of \$17,900 under item No. 13, for this function. However, no specific source of revenue for this cost has been found in the Fish and Game Code.

Are the salaries, expenses, overhead, etc., of Fish and Game personnel serving on this commission, or working for same paid out of this appropriation, or are these costs paid from the Fish and Game Preservation Fund? Should not some specific and adequate source of revenue for

this commission be provided in the Fish and Game Code, so these costs will be paid by those benefiting from this commission?

Fifty thousand dollars has been set up for Kelp-Bed Investigations under item No 14 of the recapitulation. What is the annual kelp revenue? Kelp harvesting is only permitted under certain restrictions. Therefore it appears to be a function requiring marine patrol while harvesting and land patrol upon landing the kelp. It being a private enterprise function for profit, through the Department of Fish and Game and the commission, it must at least pay its own way. Therefore we most respectfully recommend to this committee that a check be made upon the total revenue derived from kelp harvesting to determine if the proceeds from kelp harvest pays for all the services same requires and/or receives.

With seasonal precipitation and seasonal drought, stored water must be termed the life blood of the economy of California. With the development of this State, more and more water storage projects are planned and/or constructed each year. The effect of each of these projects upon our fish and wildlife appears to pose a different set of conditions, principally affecting fish.

Each of these conditions first must be sought out and established and then carefully studied, if competent and effective provisions are to be found whereby a minimum of damage will result to the fishery.

It is only in comparatively recent years that very extensive and very expensive studies are being made, particularly on water projects and diversions affecting California's migratory salmonid fishes, the salmon and steelhead trout.

But the absolute need for these very extensive and very expensive fishery studies is very definitely demonstrated when we view the alleged damage done to the Klamath River salmonid fishery by nearly 40 years of peak power surge. Below the powerhouse the flow has varied from a peak of about 3,200 cubic feet per second, followed by a sudden drop to about 200 cfs or less. This sudden drop in water volume and level is alleged to have destroyed astronomical numbers of young and adult fish, as well as much fish food, by stranding.

No fishery studies and/or provisions appear to have been made prior to the construction of Friant Dam. Upon activation of this first large federal project in California it is alleged that 10 percent of the production of California's Central Valley salmon was simply wiped out because the San Joaquin River was dried up. It was dried up in spite of former Section 525 of the old Fish and Game Code (present Section 5937) which forbids such drying up on streams with a fishery resource. An unsuccessful lawsuit to restore flow to the San Joaquin River cost our Fish and Game Preservation Fund another \$65,000 according to the "Central California Sportsman."

With this alleged stream drying precedent set on the San Joaquin River by our powerful federal government, our Fish and Game Preservation Fund will be subjected to still greater expense in attempting to

preserve our California Fisheries on water projects. Today we appear to be faced with an alleged attempt of the City of San Francisco to dry up about 12 miles of fine wild trout stream on the Tuolumne River below O'Shaunnessy Dam. This is not for the availability of municipal water, but to generate electric power for profit. On the Mokelumne River we have the situation where it is alleged that the East Bay Municipal Utility District contends that after construction of Comanche Dam they will have no water to spare for salmon and steelhead fishery spawning area release. It is the evaluation of the Department of Fish and Game that the presently remaining spawning gravels on the Mokelumne River will accommodate between 60,000 and 80,000 spawning salmon. They are unable to reach an agreement whereby spawning facilities for only about 15,000 salmon will be provided. So in addition to this possible fishery loss, our Department of Fish and Game has spent over \$19,000 for study, plus the services of a Deputy Attorney General at about \$8 an hour.

While I have no figure for the present annual cost of these studies, which also must include water quality investigations, the Department of Fish and Game told CWF that the new budget will reflect an increase of about \$260,000 for this work next year.

The ASC recognizes that this work *must* be done by the Department of Fish and Game personnel, but we also realize that it must be financed from some source other than the Fish and Game Preservation Fund, because the need for these expenditures is beyond the control of the Department of Fish and Game and/or the license buyers.

In this respect we hereby state full ASC concurrence with Chapter VII, Item 5(2) on page 103 of the Booz, Allen and Hamilton Report, which recommends that outside financing for this substantial cost should be explored. This is definitely a function of this committee. Other states have such laws.

Fishscreens in the Booz, Allen and Hamilton Report are considered on page No. 75, Recommendation No. 5. On page No. 74 is concurrence with the need for fishscreens. The report infers that legislation is needed. In this the ASC concurs.

"California's Fish and Game Program," as published about 10 years ago by the Wildlife Conservation Board considers fishscreens beginning page No. 45. This information may be summarized on a current basis that for the past 80 years the State has struggled with the problems of keeping fish out of diversions. Each successive commission started out with firm resolve to do something about it, but it remains the major deficiency in our California migratory fishery program today.

ROBERT VILE, President, Ocean Fish Protection Association

Our organization differs from most of the California sportsmen's councils as we specialize in ocean fishery problems. We represent a segment of this State's army of sportsmen referred to as the ocean angler. We believe that the policy of the wildlife federation is definitely

a step in the right direction, relative to the trout and pheasant programs and we subscribe to it.

I would like to review just briefly with the committee the income and some of the expenditures of the marine resources operation.

The largest contributor to the marine resources operation is the angling license money, assisted by the Dingell-Johnson funds, and we feel that the sportsmen are paying their way as far as the ocean fishery is concerned.

However, we would like to review with you a number of taxations on the commercial fishery which we feel should come under review. We feel that they are inadequate and should be reviewed by this committee to determine whether further revenue could not be derived for the marine resources operation.

Take the salmon tax, for instance, which is a half cent per pound on the salmon. That is not a very large tax and does not produce enough revenue to more than offset the money that is being spent on salmon today. Now, the salmon is both considered a sport and a commercial fish and if you were to look to it on a fifty-fifty basis, then this salmon tax is way out of line.

Also I would like to bring out that the salmon tax is definitely earmarked for salmon and for no other purpose so this fund here could not be used for any other phase of the overall research into the ocean, you might say.

I would like to bring to your attention that the tax on shellfish is one cent per gallon shucked. This revenue is also marked for shellfish only. Now, the revenue derived from shellfish is combined with the revenue derived from the kelp tax and you can't break it down to find out what it is, but it is still very minor.

The money taken in for the pelagic fish such as the sardine, the anchovy, the jack, the mackerel, pacific mackerel and the others, is also a tax that is definitely earmarked for that specific research project.

The tax on this is \$1 per ton. Now, if the marine research committee is in a plight for money, it seems to me they would look to an adjustment of this tax in order to compensate for the loss of funds that is going to cut back on their program.

On other fish delivered such as tuna and members of the tuna family, there also is a tax of a dollar per ton, but this tax is not earmarked. However, in going over the figures from the Booz, Allen and Hamilton report here, it definitely shows that money taken for tuna in the way of taxes is spent right back for tuna in research.

I would like to touch on kelp as the gentleman did before me. It is interesting to note that in leasing kelp beds that the minimum that can be paid to the department is \$40 per square mile. The actual tax itself is 3 cents per wet ton. In addition to that there is a privilege tax of 5 cents per wet ton, so all the kelp harvested is being paid for at 8 cents per ton.

Now, certainly their business is more valuable than what they are paying in taxes as far as harvesting this resource is concerned. I will have to agree that the tax, or pardon me, the kelp program that has been carried on for the last five years was primarily started in the interests of the sports fishing, but I notice that also the commercial

industry is contributing money towards that and I believe that comes out of the money for the pelagic fish fund.

But here are a few of our resources that are being harvested commercially for profit and yet are yielding a very minor amount of money. I believe in total that the kelp tax and the tax on shucked shelled fish brings the State about \$5,000 a year. Now, I am just curious if the State can even afford to keep books on it for \$5,000 a year.

We are very much interested in this kelp program. You haven't heard much from us on kelp for a period of time because we have been waiting for the results of this study that cost \$250,000 to find out what the problem is with the kelp in this State, and at our delegates meeting on the 20th we will be brought up to date on what has been done on this kelp research and will also see a number of films along that line. I think it is time now to make a decision as to whether or not kelp cutting is harmful to our fishing. I would also like to point out one thing here, that the entire total revenue received from the commercial industry amounted to \$584,000 according to this report from the department, and I presume this is for the 1958-59 season.

I think there is a possibility of additional revenue as the fresh fish is in direct competition for many of the species that we seek as recreation. I think they should share the research along this line also as the money taken in from sardines, mackerel, anchovies and tuna are pretty well spent in that field and very little money, probably nothing at all, to be very frank, is spent along the barracuda, white sea bass and halibut and others that are both directly in competition commercially and sports fishingwise.

We had quite a problem in determining, although we feel that the ocean angler is paying his way. The department made the statement they thought they were pretty well paying their way, but we disagree with their 1955 survey and the way they proportioned the money.

We would like to bring this to your attention that in 1955 we had one of the poorest sports fishing years and a few years prior to that was also very poor. Naturally, the fishing falls off as far as the angler is concerned, but we feel that in 1957 the sports fishing began to return in quantities that enticed people to come back down to the ocean and enjoy sports fishing, that the ocean angler has increased by leaps and bounds and this is clearly shown in the \$1 license for the three-day permit which has jumped considerably.

I believe the last figure I saw it was up to 86,000 permits—just for a permit to fish three days out of the year.

Now, we feel that the general license itself should be up in a percentage that is fairly equal to that, and we believe at this time that a new postcard survey should be made to determine the differences in percentages at this time. We also would like to point out the sad water conditions that are developing in Southern California, particularly in the Los Angeles area and areas that are along the seacoast.

People are turning from trout fishing now and depending more and more on ocean sports fishing, and I think this situation is going to become even more pertinent as time goes by unless nature makes a sudden change and gives us a good deal of rain. These people are not

going to be able to find room to use this as recreation let alone fish in the Los Angeles area.

There won't be enough of it to go around. They are going to have to depend on the ocean. A lot of them have found that by using fresh water tackle in certain areas of our ocean along our breakwaters and along our rocky coast line they are able to derive practically the same type of sport only they catch a little larger fish and some of them have given up trout fishing completely in favor of this type of fishing.

But in the future we look for even a greater pressure on our ocean fisheries by the sportsmen of this State. Los Angeles County is expected to have an additional half a million people in this coming year. Out of that half million naturally along comes a number of fishermen that are going to seek recreation by fishing.

If they can't find it back in the streams and in the lakes, they are going to find it in the ocean, so this is something that we have to look forward to and try to anticipate and I believe that this marine habitat development program which has been started under the financing of the Dingell-Johnson program and is now being continued under the wildlife conservation board money, is going to be the answer to some of these problems.

I would like to direct your attention to page 163 of the Booz, Allen and Hamilton report. This seems to be quite a controversial report when it comes to the figures. I would just like to direct your attention to the figures on marine fish programs, primarily the expenditures and revenue. It gives you an idea of what is being taken in in relation to the different categories of fisheries and what is being paid out.

In many cases such as the pelagic fish program they are spending 8.1 percent of the money and the revenue is only 2.4 percent. In cases like that I feel there are some things that are out of balance here as far as that is concerned and that is why I brought this tax program into this thing here.

In the case of other sports fish, the expenditures are 2.8 percent, the revenue is 4.1 percent, so that gives an inkling there that more money is being spent on what we consider commercial or commercial projects. Although they are for the benefit of the State and the people of the State, they are not the fish that we are fishing for. They play a very important part. We can't deny that, but if there is no way to determine how this money is to be split up, I don't think unless they sit down and figure out the value received from a fishery or something on that order so that the license money will be appropriated into projects where commercial money is being directed, because it is of importance to the sportsmen.

But on what scale should it be directed to that project and if too much money is directed to any one project of that type, then other projects which are of vital interest to the sportsmen are neglected. We kind of feel that we are on relief in some respects in the marine fishery projects that are what we could consider sportsmen's projects, such as the white sea bass and the barracuda projects.

Now, these projects are carried on under the Dingell-Johnson fund of which the State only provides 25 percent of the money and 75 per-

cent comes from federal revenue where it is collected on tackle. And this has been the case in a number of projects because one project just mentioned, the marine habitat project, that was financed under the Dingell-Johnson and Wildlife Conservation Board money.

The life history of the barred perch, which are primarily a sports fish, was financed under that method. And one thing I am just a little bit concerned about, some of these programs are awfully short-range programs I don't believe—there are some of them that do not run long enough—maybe it is a case of finances again—to really get a true picture of the thing. However, we intend to go into this further. I think by looking at this Booz, Allen and Hamilton report, it has opened our eyes on a good deal of things and the questions that have been thrown out today, whether you think this survey was a value, in some instances I think it was very good and in others I hesitate on it, but because some of their figures on money are definitely out of line, like the figures based there on one particular year where as I mentioned the sports fishing was terrifically bad and in that year everybody went bottom fishing.

In Southern California we have two types of fishing and about the only time they will bottom fish except for a real select group of people that like that, is the group of people that go there out of desperation. I think the greater majority of people enjoy the surface fishing.

In that year they consigned almost the entire amount of money to bottom fishing projects. Now, this didn't make sense at all. When the money was divided up under the survey made here only \$286,000 was devoted to bottom fishing, so I don't think they knew where they were going when they started with some of these figures, but it did lay down for once a complete file on money.

I think this is very valuable along that line. Maybe they are not exactly accurate, but they are down so we can look them over.

I would like to speak on one more thing here. When your letter came out you were going to have this meeting and wanted us to review more or less the budget, we made it a point to go to Terminal Island, which is the headquarters for the marine resources operation and to go over the personnel that are there, more or less you might say that they do not actually produce anything but facts and figures at Terminal Island, but we went over the personnel and asked questions as to what type of work this person was doing and that person and how many people were assigned to this type of work and the other, and we do not feel that there is any waste of funds in this case.

In fact, you might say it is a little embarrassing. We went down to pick up some pictures for some of our publications and we found a picture of the manager of the Terminal Island branch out pulling beach seines along with the same people who were doing the work on the survey, so apparently he had to pitch in to help, and I know that is the case.

There is a lot of work that goes on there where one biologist has got to go over and help another go through a program and the thing is vice versa, and I don't think there is any wasted motion down there at all.

I would like to talk if I may: just a few minutes on conservation education because Mr. Thomas has directed a question to one witness here which I would like to take on in this form.

We have taken it upon ourselves, we of the Ocean Fishery Protective Association, to start a little conservation education on our own and while I was sitting back in the audience I noticed one member of the committee up here has a copy of that paper which contains four pages, and I am sure he will share it with you, or I think we have some with us and I would like to have you see it.

We have devoted a picture page to some of the research that is being done and feeling that facts and figures do not attract the general public, we are using pictures and a layman's explanation of what is being done. This is going to be done every month in our publication along with disseminating the news of our organization meetings and such, and we feel that we will be doing our part.

I think conservation education within the department is a real problem because it is a problem to just get to such a mass of people and, as I said, it is awfully dry when you come down to it. Unless you are directly interested like I am and you are, there are a lot of sportsmen that really delve into this stuff and are very interested. I can't say it is wasted. It is good material and I know we receive *Outdoor California* and most of the boards of directors receive *Outdoor California* and we also receive the fishery bulletins with all the scientific information and we do receive quite a few publications.

At times we have been displeased with some articles that appeared in *Outdoor California*, but I think we resolved this problem with the department and found that people are hungry for this type of information and that is why we built our paper around it.

We found that when we had an open house at Terminal Island in cooperation with the Department of Fish and Game and invited our people from our clubs down there to see what work was being done with their license dollar, we got a better turnout than we ever expected. We had a terrific turnout and the people were really enthusiastic to see what was being done in their interest with their license dollar.

If a person doesn't see where his money is being spent in a wise manner it is very difficult to get any more money from him. If he is educated to see that his program is being handled in a wise manner and there does come a time when there is a need for more money, he is going to be willing to give it.

The paper is financed by ads. I would like to point out, however, we don't have to solicit the ads. We have to build the circulation. One more thing, Madam Chairman. I let these things slip away from me.

Mr. Thomas asked several of the witnesses if they had taken action on this Booz, Allen and Hamilton Report. I would like for the information of the committee to say that we did take action on a section of this report before the Senate Fact Finding Committee on Natural Resources on seven points of reorganization.

I doubt if our organization will ever take action on the entire thing. I can state here that we are happy with some aspects of it. Some of them, we are not, but no doubt no matter how varied or how good it was or how much money is spent, somebody is going to find some fault with it.

I would like to thank you for the opportunity of appearing before you today and I will look forward to meeting with this group again

BURTON BANZHAF, Representative, Ukiah Rod and Gun Club

We understand that the purpose of this hearing is to examine the cost of the fish and game program, and in particular to determine whether the sportsmen believe that the revenue for operation of the department should be increased with a consequent increase in license fees, or whether the services of the department should be limited by the amount of revenue available at the present cost of licenses

We do not believe that any worthwhile program of the department should be curtailed for lack of revenue merely because it would involve an increase in the cost of licenses. From the information available to us, it is our belief that the program presently being carried on by the department does not warrant an increase in the departmental budget at this time

From our study of the cost of operation of the Department of Fish and Game we note the following

a The raised trout program costs amount to almost \$2,000,000, while the revenue from licenses to support the programs produced roughly \$700,000, thus a deficit.

b The raised pheasant program costs in excess of a half million dollars, and the income supporting the program is approximately \$100,000, again a deficit.

c The game management program in the five regions costs in excess of \$600,000 in salaries alone according to our understanding of the 1959-60 budget. The revenue produced from this phase of the program we presume would be offset by the hunting licenses sold

We have mentioned these three items from the budget to illustrate our position with reference to this matter. We are of the opinion that the department is spending too much money on the artificial propagation of trout and pheasants. We are opposed to the continuance of these programs at the expense of the sportsmen of the State.

If the raised trout program and the pheasant program are to be continued, we believe that the cost of those programs should be limited by the income realized from licenses sold to support the same. We are opposed to the continuance of these programs so long as they operate in the red.

We feel there is too much emphasis placed upon the artificial propagation programs and not enough emphasis upon the improvement of the natural habitat of fish and game. There is a great need for more work on stream clearance and improvement, and need for an improved controlled burning program.

Both of these projects will, in our opinion, lead to an increase in migratory fish and in an improved range for our deer herds.

The artificial propagation programs have no permanent long-range effect on trout fishing or pheasant hunting, carried on as they are on a "put and take" basis. The sportsmen and landowners in the area represented by our club are not in accord with some of the policies

advocated by the department, in particular they are opposed to the department's policy on antlerless deer hunting.

We believe that the department is spending too much money in an attempt to convince the people that antlerless deer hunting will benefit the deer herds in our area and not enough time and money in the improvement to the natural habitat of our herds.

For example, the department spends for publications some \$114,000 annually, some of this cost, it is true, is for printing laws and regulations, but a substantial portion of this sum is devoted to publication of *Outdoor California* and technical reports. And at this time I would like to deviate from the printed copy here to say that we feel that the *Outdoor California* although it is supposed to represent or be the magazine of the sportsmen of the State, we have not been able to get anything published in that magazine that is contrary to the policies of the department.

In other words, we feel that it is totally one-sided.

In these publications the department devotes much time and effort in an attempt to influence the landowners and sportsmen to accept the department policies on such matters as antlerless deer hunting.

In conclusion, we are in favor of a budget for the department based upon less service to the sportsmen, especially as it pertains to the artificial propagation program, and more attention directed toward the improvement of the habitat of both fish and game.

JERRY DAVIS, Southern Council of Conservation Clubs

We have found our task of analyzing the Department of Fish and Game expenditures somewhat complicated and confusing. While we accept the report of this committee as being accurate and sincere, our main interest lies in that of the 1960-61 Budget. It is our understanding that if this budget is accepted, the department should show a surplus of more than \$8,500,000 at the end of this period.

We feel a balance of this amount is quite acceptable and to maintain a larger balance may not be as healthy as it could be attractive to outside interests. It is our further understanding that the 1960-61 Budget submitted by the department is reasonably close to their anticipated income.

If this is true, we find this acceptable to our wishes. Beyond this point comes the problems. Where do we find the department expenditures desirable and where do they become undesirable? To help us find this answer to this question the southern council circulated a questionnaire to its member clubs to gain their individual views.

We felt this would be an aid to better analyzing and understanding the composite thinking. The results were quite interesting.

We will start with the three questions requested by your letter, Madam Chairman, of December 7, 1959. The first question, do you wish to continue the program at the present level of financial administration, the composite answer to this question was a qualified yes.

The breakdown by the clubs was 12 yes, 11 no, one club said, "Yes, we do not want an increase in license stamps or tax."

Another club said, "Yes, in some cases, no in others."

They believe the Department of Fish and Game is doing a good job but it would be a mistake if even they were satisfied. Another club said they could not answer due to lack of knowledge.

To question number two, where do you feel there are areas that may require a cutback. The composite answer to this question was, none. The breakdown by the clubs was 5 clubs requesting no cutbacks while one club suggested a cutback on unnecessary waste, another club on departmental heads, five suggested—I hope you will understand these are answers to questionnaires. Five clubs asked for cutbacks in co-ops, one asked for a percentage of cutback on these and one said 50 percent and another asked for 100 per cent cutback.

One club said evaluation should be made and cutback on overhead and projects found to be obsolete and not worth their expenditures.

Another club said expenditures for fresh water fish should be cut back.

Thirteen clubs did not answer this. However, I would like to point out that six of these clubs that did not answer were ones that answered yes on the original question which should qualify this question.

On question number three, where do you feel there should be an expansion in certain fields, the composite answer to this was none. However, on the breakdown of the clubs there were four of them, only four clubs that asked for no expansion. The balance of them, three of them said conservation education, public and the department both, two clubs asked for public relations expansion, another club asked for expansion in salt water and another in salt water patrol, and another in artificial habitat in salt water.

One asked for big game habitat expansion and another one for just habitat development. Research was asked by another club and another for pollution. The trout program was mentioned by another club. Another asked for pheasant co-ops and this club that asked for an expansion in the pheasant co-ops qualified it by saying they should charge for the service.

Another asked for more wardens. Another club asked for an increase in programs in accordance with increase in license sales.

Another club asked for preservation of available recreation areas and access to sale for the future.

Another club asked for expansion in department control of salt water fishing.

Ten clubs did not answer this question and again I would like to qualify them as nine being answered in the first original question.

In addition to these questions the questionnaire furnished additional information that may be of interest and value to the committee.

We submit these questions and answers for your evaluation. Question number one, do you feel that programs such as trout and pheasant planting should pay their own way and to what degree? The composite answer to this was yes. The breakdown by the clubs was 19 yes, only three voted against it, one asked for a 75 percent paying of their own way, another one merely said partially, and two clubs did not answer and one would not change the trout program. They would leave it the way it was financially.

On question number two, do you favor the department's present trout planting program, the composite answer is yes. The breakdown on

this again is 19 clubs said they would favor the program, one said no, five would stock pressure areas heavier while one would stock habitat areas heavier and one answer contradicted itself.

And question number three, did you favor the department's present pheasant planting program? The composite answer to this was yes. The breakdown was 12 yes, three no, three would charge more for co-ops, three would increase co-ops and one would decrease co-ops. Two would plant habitat area and one would plant nonhabitat area. One suggested they plant hens in the A zone and cocks in the B zone. One did not answer this.

I would like to touch on generally some subjects that were brought up and some of the committee seemed interested in. One of them was conservation education.

We feel generally that we should advance in this field too. We feel that the department is spending a lot of money on this, but it is an important project. No doubt we can improve the dissemination of material. I think they are trying to get it out to the right people, but there are many ways which a sportsman can help in this same program.

One of them is the project that the Southern Council took on 14 years ago, will be 15 years this April. We participate in the local sportsman show where we get a chance to meet the public and we have a booth there where we disseminate literature of all types, not only the Department of Fish and Game, but other types of literature for the Forest Service and so forth and all related to conservation work.

With this we man the booth and attempt to answer to the public and correlate the literature with them so we are sure they are going to get the good out of it that was intended. I think this is one project that can be carried on in other parts of the State and it is a method of getting the information out to the people that are interested.

Also, the question they ask when they come to the booth decides a lot on what type of literature we hand them.

On the Booz, Allen and Hamilton report, we took a period before the Senate Fact Finding Committee on Natural Resources and quoted the Booz, Allen and Hamilton report. We used it as a guide. Many of the committee chairmen have the Booz, Allen and Hamilton report in their possession. We were short a few copies. They are passing back and forth. One in particular was the vice chairman of the Council of the Southern California group. He carries it with him and he uses it as a dictionary.

Many of our facts and figures come out of this book. However, I believe the report itself is coming to a place where it is two years old and soon will wear out as far as facts in it are concerned, and probably, I don't suggest replacing it with another survey, but I hope by then, in another year or two, we will resolve many, many of these problems.

I think the department is working on this very strongly. Two months ago we had a member of the department out to the council at one of our meetings in which he went down item by item in the Booz, Allen and Hamilton report on the recommendations and told the council just where they stood on these items. They were very interested. It took about two hours for the program.

However, the council members were very interested and attentive all the way through, so I believe it is valuable and I think it paid off in a lot of ways.

EDMUND KOHLHAUF, Representative, Golden Gate Sports Fishers

I would like to say here now that we differ possibly from most of the organizations on the license fee structure and so we make our presentation. In other phases of the hearing we would like to concur with the Associated Sportsmen of California.

The Golden Gate Sports Fishers feel that an increase in license fees for sports fishing is inevitable to enable the Department of Fish and Game to provide the services asked for by the license buyer. We hardly are in a position to judge just what the amount of this fee should be; nor can we leave it up to the license buyer by asking him what he wants to pay.

Rather the Legislature should determine what is necessary in license fees to keep the various fisheries in good condition. To this end we hope the following suggestions will be of help to this committee in their determination.

In 1928 the fishing license has been increased from \$1 to \$2. Also in 1928 the average weekly wage of the production worker was \$29.24.

In 1959 the average weekly wage of the production worker was \$102, better than three times the amount he received in 1928. Therefore he also should be able to afford three times as much for his fishing license, which would be \$6. Whatever amount is determined for the fishing license, this amount should be uniform for the following reasons:

- a. This would be the most economic and efficient way.
- b. The majority of license buyers fish for more than one group of fish.
- c. All fisheries need extensive research in the near future, partly to offset losses incidental to the march of progress, partly with a view of finding ways to enhance fisheries to provide sport for the ever increasing population of the State of California.

Should it be desired to break up the license fee into different groups we would like to recommend a basic license fee of \$4 and stamp in the amount of 50 cents each to be attached to the license for each of the following groups: (1) ocean fish, (2) striped bass and fresh water fish; (3) trout and (4) steelhead and salmon—each stamp to be easily distinguishable from each other.

If no change of the present setup in license fees is contemplated, the \$1 stamp now required to take salmon in fresh water should also apply to this species in salt waters.

I believe that this has been overlooked in the 1957 increase in license fees in which we said nothing should be added to the ocean fishery, but certainly the salmon should have had a dollar added in addition to pay for the research that is necessary.

Our basic recommendation would be that the license fees should be one license and they can fish in the State of California in the water and take whatever fish are available. We believe, and I hope that sometime in the future the fishing, sport fishing fraternity will work as a team rather than bicker over a one- or two-dollar stamp here or

there. I hope they will shoulder the responsibility and provide the department with enough money to give them what they ask for.

At times it is necessary to put a little more money into one program and at other times it is necessary to put it into another program, and I believe \$2 is hardly enough to squabble about. I believe the sportsmen should band together and help each other.

JOHN GILCHRIST, Representative, San Francisco Tyee Club

The Tyee Club is an organization of sports fishermen dedicated to the enhancement of the preservation and propagation of the king salmon. It is one of the largest organizations of its kind and it has its counterpart in other sections of the country particularly in Oregon, Washington and Canada. This is their adopted program.

1. That applied basic research be expanded and co-ordinated with the several states and the universities and that applied research be further developed by the Department of Fish and Game.

If I may comment very briefly on that one point, that, of course, has been discussed at length by all four organizations, or five organizations I might say. And we are in full accord on that. We have discussed this at great lengths with the Department of Fish and Game. There is very little variance between any of us.

2. That the downstream planting and marking program be further enlarged and developed. Those of you who will remember, that was a program that you gave us authority to start last year.

3. A sportsmen's tagging program to further assist the department in catch and migration studies be developed.

4. That specific legislation be enacted to provide adequate water of proper quality be maintained by any agency damming, diverting or using same for the proper sustenance and preservation and the continuity of fish and wildlife. They are specifically referring to the problems we are now facing on both the San Joaquin and Mokelumne Rivers. We are all in accord on that.

6. Expansion of conservation education program. In other words, we are all fully in accord with expansion of that particular program.

7. Development of a program to voluntarily clean up our water, beaches and forests from the activities of litterbugs.

8. That Coleman Hatchery be enlarged and further utilized to the fullest capacity. We are all in accord on these last two counts.

9. That adequate legislation be provided for screening water diversions as recommended by the Department of Fish and Game.

In conclusion, they note that it is resolved that the Department of Fish and Game be commended for the excellent co-operation given by the regional officers in the development of the close working relationship, further that those men of the department and those others who contributed so much of their own to the salvaging of the salmon run at Nimbus be publicly commended and thanked;

Further that adequate funds be provided from the several sources to effect the completion of these programs.

On that last, I might point out that all three agencies have been working in very close co-operation with the Department of Fish and Game for the last two or three years and that we have enjoyed their confidence and their guidance and their co-operation on these problems that I am referring to at the present time

They have been in attendance at all of our meetings. Now, the only thing that I would call your attention to would be this particular point, No 5, and I am quite sure that all three organizations will come forward with a program which will call for an extended natural spawning program or spawning of salmon under natural conditions. We are working on that at the present time

We have encountered some problems that have not yet been answered. As soon as the department does come up with this, I am very sure it will be the intention of these groups to try to present legislation to effect that program

CARL O. FISHER, Representative, Superior California Wildlife Federation

We certainly haven't any quarrel with the department as far as their policies are concerned and we are very happy to learn that the pheasant farm program is going to continue to furnish young birds to the sportsmen's pens. The clubs in our area, Sacramento, Yolo and Solano and part of Sutter County, are very much interested in this because they have a lot of money tied up in pheasant pens which they have built over the years and gone along with the department following the program and trying to assist them and it would be pretty hard to dispose of these pens at the present time

Now, one point that I think has been mentioned already that I would like to clarify—somebody mentioned the fact ~~that~~ the sportsmen are using these birds for their own private shooting. Due to the number of game bird clubs in our area it has been forced upon us to try to find some local areas for our local people to shoot on and for that reason why we have planted birds on areas set aside

Now, as you well know, all of the pheasant country is privately owned and none of it is public property to speak of at all. Well, therefore, these people that own that property surely have a right to say something about what is going to be done on it and how it is going to be managed.

We have entered into some agreement with the farmers in our area. We have a fairly good farmer-sportsmen's relation and we have such a shooting area

Another thing we have noticed too, it has been very difficult in some highly cultivated areas where row crops are raised to obtain areas for the planting of pheasants. A lot of these farmers don't want pheasants planted where they are raising row crops, and I think the department well recognizes that fact and the sportsmen in the local areas also.

The commercial game bird clubs are causing quite a little problem and I am going to tell you what this is, which is not my own particular opinion, but is the opinion that has come to me through some of the clubs that operate large shooting areas on a cost basis, and at the present time these game bird clubs are located on practically the best wild cover in the area and due to the long shooting season that they have they are the beneficiaries of the wild pheasant

Another thing, too, I believe that it is generally conceded that they buy mostly mongolian pheasants which are birds that do not survive very well in the rice country and for that reason why a lot of the wild birds that are shot are shot on these wild game bird clubs

I think the Hart report will bear this out. The activities of the clubs is something like this. They are located on the best cover that there is in the area, wild cover for birds, but if they have any dog training to do, the dogs are usually trained outside of the game bird clubs. This has a tendency to drive birds into the club all the time and it isn't really necessary for them to plant as many birds as they would otherwise.

The only reason they plant the birds is to get the shooting privileges. In other words, they are allowed to shoot 70 percent of the birds that are planted.

CHARLES BULL, President, Northern Counties Wildlife Conservation Association

We herewith submit certain undeniable facts upon which are based some of the purposes of our organization, together with recommendations pertinent thereto. We respectfully request you give these matters your carefully considered attention in appraising the value and scope of the "services" rendered by the California Department of Fish and Game:

1. The wildlife is a public resource which belongs to all the people of the State.
2. The sportsmen who hunt and fish represent less than 10 percent of the population.
3. Any state agency must act in the better interest of the majority of the people. Otherwise such an agency cannot be justified as a function of state government.
4. The purpose of the Department of Fish and Game is to "preserve, protect and restore" the wildlife (Wildlife Conservation Act).
5. It is not the purpose of the Department of Fish and Game to provide meat or fish for anyone.
6. If providing is to be done, it must be done by private enterprise and initiative with private capital.
7. By providing, arranging for and engaging in promotion of hunting and fishing, the Department of Fish and Game is not acting in the interest of the majority of the people of this State because the overwhelming majority of the people derive no benefit from such activities.
8. The only justifiable reason for this state agency to engage in arranging for killing of any part of the public resource of fish and game is for the purpose of controlling depredation of private or public land. This must be done on a limited basis by the best qualified hunters under the strict supervision of the wildlife protection branch of the Department of Fish and Game.
9. Game or Unit Management is not necessary unless the killing of the female deer is allowed. This was admitted by Mr. A. Starker Leopold of the University of California at an open meeting on the U. C. Campus in 1959.

10. By returning the Department of Fish and Game to its proper division status as primarily a wildlife protection agency, such as it was under the Department of Natural Resources, the following accomplishments could be achieved

a This agency would again function in the better interest of the people and not contrary to the intent of the very act under which it was created.

b Approximately \$5,000,000 per year could be saved by eliminating the game managers which would no longer be necessary.

c. It is at this time evident that the majority of the people of this State are not willing to accept the present policies of this governmental agency. These policies, which reek of commercialism and encourage the use of a great public resource as a 'harvestable' commodity and a mere plaything for a small minority of shooters and other commercial interests, can no longer be tolerated by morally honest citizens.

We sincerely believe the adoption of legislation based upon the above facts is the most logical solution to the present dilemma of the Fish and Game Department acceptable to the owners of our fish and game resources; the citizens of California

We urgently request that the foregoing testimony be given such consideration by your committee as this honest effort to present true facts rightfully deserves

MARIS WARD, Chairman, Fish and Game Committee of Del Norte County Chamber of Commerce

The Fish and Game Committee of the Del Norte County Chamber of Commerce have discussed your letter and your coming meeting. Due to the distance and time involved, it will not be possible for us to attend the meeting, but we would like to make the following recommendations

That fishing license fees be increased and the increase used for the operation of fish hatcheries in California. The actual cost of the license is a very small percentage of the total amount spent by fishermen, and any objection to an increase would not have a valid foundation.

The pheasant population in California is at a dangerous low and it appears that either the season should be kept closed, or that the pheasant license tags be at least tripled and the revenue raised be used for the planting of pheasants

CECIL PHIPPS, Individual Sportsman

I am speaking in this particular instance as an individual sportsman. I do appreciate the privilege of doing so. I had come to Sacramento following my interest in matters of fish and game merely to observe. However, during the course of the two-day session I noted a great many facets of fish and game management were, I thought, being overlooked

There are two or three things that I would like very much to have inserted in the record. I feel perhaps it might be in order to qualify me as an individual sportsman taking up your valuable time today and I should like to tell you that I am a former president of the Sportsmen's Council of Central California, presently vice president again.

I am a director of the California Wildlife Federation, a past president for two years of the Fresno County Sportsmen's Club, the chairman of the Fresno County Recreation Commission and a member of various advisory boards to such organizations as the Forest Service and so forth.

There is one point I would like to be able to take back to Fresno with me and that is a clarification of the fiscal position of the Department of Fish and Game. Down in our area a great many people become disturbed with the prospect of a license increase. Knowing full well the history of the increase a couple of years ago, primarily due to the fact I was in Sacramento almost weekly at that time in my capacity as president of the council, I was disturbed by the information being disseminated. I am happy to learn since arriving at this hearing that apparently while there were two schools of thought on the fiscal position of the department, it was merely due to the fact that they were taken from apparently two sets of figures.

I believe the points of difference primarily are the frozen funds as they have been referred to during the last two days. In that connection I would like to present the position of our council at the time I was president of it, 1957-58.

We discussed this very thoroughly on numerous occasions and it was our, not completely unanimous but almost so, opinion that there should be a general across the board \$2 license increase. However, during the course of the deliberations of the various committees of the Legislature, the stamp plan was agreed upon.

To this we had no objection. The 50 percent frozen portion of it was again by action of the Legislature and again we did not object to that.

However, it is our understanding in the central part of the State, and when I say "our" understanding, again I think I am safe in speaking for this particular council because over the years they have certainly backed me up in statements such as this. It is their general impression that they are paying \$5 to go trout fishing and that the \$5 goes to the Department of Fish and Game for management and development, perpetuation and conservation of our resources without any strings attached.

I wanted this committee to know that that was the basis upon which they supported this increase in 1957. Now, it is my understanding and I intend to take this home with me, and I wish you would correct me if I am wrong, that since the license increase the department has accumulated a surplus greater than what it was at the time and that it is expected to be a substantial surplus by 1961-62. By that I mean it will be somewhere in the neighborhood of in excess of \$4 million and in view of that, if the money is used for the purposes that the remaining funds are used, then obviously there would be no necessity for a license increase.

I believe you stated yesterday that you had the impression that the sportsmen after some testimony here would not be opposed to a license increase. I think maybe I can assure you that the contrary would be the truth in the central part of the State. I think we would oppose a license increase in view of the figures just read here. We don't think it is necessary. We still think the frozen funds belong for the purpose for which they were raised.

One other item that I want to touch on and it has been touched on several times, and that is the department budget and the proposed increases in it I think probably I am like the average sportsman I can read the department budget It means about as much to me as my insurance policies do I don't understand them either, but I do read them. I am concerned about the apparent tendency to belittle the 25 requested personnel for water research projects I am concerned because in my capacity as chairman of the Fresno County Recreation Commission, for example, I have been witness to seven big brand new water impoundments being built in Fresno County, one of them still under construction, and the resulting problems that they have brought on our local area without any compensating funds anywhere along the line for recreational features

I am concerned because I think perhaps at the completion of the proposed California Water Plan, our concept of fishing in the outdoors may be entirely different than what we know it today I am thinking in terms of perhaps 30 years from now. To me the most important function that the department can do is to safeguard the interests of our wildlife for the future years

There again, I can cite the example of the construction of Friant Dam If we had had a department and a director with sufficient foresight at that time, I am confident we would not have 50 miles of dry stream bed on the San Joaquin River. I believe we would also have a considerably better salmon run than we have today

Again, I would like to cite another example of some months ago the former director of the department was held up in what you might term ridicule in a local newspaper over his actions or concern over the disposal of radioactive waste Those of us interested in the future welfare have checked into this further and believe me we are disturbed over it, too To me I think the department is to be complimented in keeping abreast of these needs and the California Water Plan to me, I think, is the greatest danger and still at the same time perhaps one of the greatest assets that fish and wildlife can face in this State

I am certain that the majority of the sportsmen in the Central California area, and of this I am almost positive, would definitely favor funds made available for complete investigation of all proposed water projects and there again in my particular county, I am well aware of the work and the man hours that have been put in on these seven projects that the two utility companies have built and are building in our area, the fights that we have had to go through to maintain adequate stream flows and that sort of thing, and without the capable help of the department personnel obviously the sportsmen could not possibly have been successful

So I strongly urge that that be given serious consideration Again, in my own personal opinion, I deplore the need of license dollars to accomplish this To me this is a project or an expense that should be borne by the project itself rather than using our license, our conservation perpetuation license funds for that purpose

I can't urge you too strongly to give that serious consideration Just one more brief thought and I will cease, Madam Chairman I have obtained one thing out of this two-day hearing which certainly made

it worthwhile for me, and that is the fact that it has been amply demonstrated on numerous occasions during the past two days the needs and place for trained technicians in fish and wildlife management I think it has been amply demonstrated here time and time again that we sportsmen don't know all the answers

We continually have to refer to the department even though we don't always buy their programs I have heard over the past 15 years the department biologists held up to continued ridicule and yet I know that a great many of those are university trained, sincere, dedicated men, quite competent in their chosen field, and wildlife management is becoming an accepted course of study in some of the major universities nationwide

Just one other thought I view with alarm the tendency to earmark funds I think this committee of legislators is very much aware of the dangers involved in specifically earmarking funds for any specific person In that connection I would urge that the Fish and Game Commission be delegated or directed perhaps might be the word, to balance their expenditures and their programs within the reasonable bounds of income as has been demonstrated here today I think it is the general consensus that by and large most projects and proposals should carry their own weight from the income field

There again, in that connection, considerable discourse was had on the way this money is to be allocated and the way it was to be spent and so forth, but very little was said about where it comes from, the actual breakdown of where it comes from and there again I am pointing up the mass of license buyers in Southern California I have skipped over a number of things in the interest of time, but I am sure the committee here will keep on top of them as they come up in these management proposals and projects

EDDIE BRUCE, President, California Wildlife Federation

For the record, the federation is deeply indebted to you, Madam Chairman, for your support of legislation that has greatly benefited the sportsmen, specifically with regard to Assembly Bills 140 and 141 which we regard as two of the best bills

I might add that in this regard and others, the federation has gone all out to support the author and the contents of these Water is of vital interest to us and we are happy to receive the support of our legislator in these regards

Regarding the Booz, Allen and Hamilton recommendations; we did not take this report and make from it specific recommendations in connection with the department's proposed budget However, I am sure that you and your combined wisdom as legislators can note that in all but a few places the member councils of the federation have recommended change specifically in regard to the trout and pheasant programs

This was done by the federation with the combined support of the member councils and was stated to this body in its general sense as our policy. You have noted that the federation's policy on trout and pheasants does differ greatly from the department's recommendation to the commission We do agree on the basic issue that these programs should pay their way

The inference would be then that the federation would be opposed to a license increase and would therefore push for all our worth to hold the line of attempting to keep costs down, but would still be realistic in our thinking when confronted with the real problems as noted each and every day by the ever increasing population.

As I promised to you, Madam Chairman, while under oath that we would at our next meeting discuss the Booz Allen and Hamilton Report and the more specific recommendations, and would send a report of our actions to you immediately following, and I am very sorry indeed that the member councils of this federation did not take these issues on in their entirety and for that reason I, as their spokesman, can only report to you under oath their exact statement.

In this regard, while I should desire to submit a more concise recommendation from the federation, you can therefore see that I am only testifying as to what action specifically the federation has taken. It is vitally important to the federation to establish good public relations with the Legislature and agencies of government that we come in contact with.

Our thinking and actions taken are based on the facts as we know them to be and are not based on intumescence by anybody, be it the Legislature or an agency.

We feel that this committee has performed basic functions of its office and has been received with great interest by the people you represent. In other words, we as a united federation of councils are appreciative of your effort in our behalf. Your reward has been our constant support of you in your individual district, and as long as you continue as you have, you will continue to receive our most profound appreciation.

I should like to submit for the record and read in the same, our policy on rough fish and our policy on the proposed water resources development bond act, which will be acted on by voters of this State.

This is the resolution by the California Wildlife Federation dealing with the subject of rough fish control.

Resolved by the California Wildlife Federation. That we hereby concur with Associated Sportsmen's resolution number 57-11 dated November, 1956, which was reaffirmed at the ASC convention at Santa Cruz in September, that rough fish control in our large low and middle elevation trout streams, which are dominated by a large population of rough fish, is necessary for the competent management of our wild trout fishery.

The request contained in this resolution is based upon the Taft-Murphy study printed in California Fish and Game Quarterly for April, 1950, entitled "Life History of the Sacramento Squawfish."

This is the resolution of the California Wildlife Federation relative to the California Water Resources Development Bond Act.

WHEREAS, The members of this federation are deeply concerned over the absence of language in the California Water Resources Development Bond Act (Chapter 1762 of the Statutes of 1959) providing for the protection and enhancement of the fish and wildlife resources, and other recreational developments, of this State

on a non-reimbursable basis, in connection with the proposed water development program, and

WHEREAS, It is the position of this federation that provisions for the protection and enhancement of fish, wildlife and recreation are of the utmost importance to the health and well being of the people of the entire State and that provision therefore should clearly be made in the Bond Act prior to its submission to the voters of the State for their approval,

"Now, therefore, be it

"Resolved by the California Wildlife Federation, That the Governor of the State of California be respectfully urged to convene the Legislature in a Special Session for the purpose of clarifying the policy contained in the California Water Resources Development Bond Act with respect to, among other things, a financing provision for protection and enhancement of fish, wildlife and other phases of recreation, and be it further

"Resolved, That the secretary of this federation be directed to transmit a copy of this Resolution to Edmund G. Brown, Governor of the State of California"

Specifically in this regard, a copy of this resolution was placed on the Governor's desk

I am, however, not prepared to advance any great dissertation on this bond act specifically in regard to money or project. We, as you have noted, are most concerned with the recreational values. As legislators you are more prepared to discuss the other ramifications to which I have referred, and Assembly Bills 140 and 141, in those bills we had our interests spelled into the language

In the bond issue we are at the mercy of an agency. It is possible to work this matter out with the agency in question. However, it would require a terrific amount of legwork, so as a result we have asked our Governor to concur with our simple request as outlined in our resolution. We earnestly solicit the support of this committee in this regard.

In finalizing this, may I personally extend the federation's gratitude to you for the fine exhibition of public relations in your office as chairman of this committee. I personally feel you have extended yourself even beyond your scope of office. For this we are appreciative indeed. The federation will continue to work with and assist your committee by giving you the basis of our thinking. We shall try at every turn to separate facts from figures and so doing we hope to impress upon the legislators and agencies of government our principal position in all matters of concern to all the people that I represent.

And this must be administered by competent legislation. Without this feature we would certainly differ in our thinking. We must also always bear in mind that man in his zeal to accomplish his purpose frequently destroys as he builds.

I should like to point out to the committee regarding the subject of conservation education, we are in direct relation to the National Wildlife Federation holding a national wildlife week which is concerned in

by Governor's proclamation each and every year. The federation definitely is an integral working part of this. We also have several other associations which we deal with specifically in this regard. I would like to comment on Mr. Thomas' question to one of the gentlemen who appeared as a witness when the statement was made about who was the parent body or the parent organization in the State.

I can assure you, the California Wildlife Federation is the recognized parent organization in this State. It is recognized by the National Wildlife Federation, by the National Rifle Association, by the Ducks Unlimited, Salmon Unlimited, and many, many others and is inferred by the legislative material which appears on the legislators' desks such as your legislative bulletin as the spokesman for the State of California.

For example, on your agenda you have Sportsmen's Council of the Redwood Empire, Inland Council of Conservation Clubs, San Diego County Wildlife Federation, Sportsmen's Council of Central California, Fresno County Sportsmen's Club, Ocean Fish Protective Association, Golden State Sports Fishers, Southern Council of Conservation Clubs—all these which have appeared to present their testimony before this committee are integral working parts of the California Wildlife Federation.

I should like to compliment Mr. Williamson on his motion in which you have established a citizens' advisory committee on the subject of deer. This is one of the internal problems that exist within the framework of sportsmen's organizations throughout the State of California. This is our bugaboo.

I am very sure that is reminiscent of Assembly Bill 3005, your bill, Madam Chairman, which did not pass. The Wildlife Federation would be very happy to assist you in this regard. Thank you very much.

CITIZENS' ADVISORY COMMITTEE ON BIG GAME

The interim committee undertook several extensive field trips in the northern counties of the State for the purpose of examining the conditions of the big game herds and their ranges.

Rather than to continue the series of expensive field trips, the committee felt that it would be advantageous to create an advisory body for the purpose of investigating the big game management policies of the Department of Fish and Game. It was felt that such an advisory body should have no official status, and neither its actions nor its recommendations should be binding upon the Fish and Game Committee nor the Legislature as a whole. The Department of Fish and Game stated, through its Director, Mr. Walter Shaanon, that it would be more than happy to co-operate with such an advisory group when requested to do so.

On January 19, 1960, at its meeting in Sacramento, the committee adopted the following motion which was introduced by Assemblyman Williamson:

"I move that the Assembly Interim Committee on Fish and Game create a citizens' advisory committee on big game to which the Chairman of the Interim Committee is authorized to make appointments that will provide a representative cross section of sportsmen's groups and of state and federal agencies having a mutual interest in the management of California deer herds.

"This citizens' advisory committee on big game shall meet at its discretion and shall report its opinions and recommendations on big game management to the Interim Committee on Fish and Game sometime prior to the 1961 General Session of the Legislature."

The advisory body met at a number of locations throughout the big game regions of the State and conducted investigations contemplated by the establishing motion. However, since it had not been instructed to meet a November 1 deadline, its report had not been received at the time that this interim report went to press. We are, therefore, unable to include it herein and also unable to provide an analysis of it at this time. But, it is the committee's intention to review the report prepared by the big game advisory group upon its submission, and since funds are not available, publication, if at all, would probably be in a mimeographed form in the near future.

The committee would, however, like to take this opportunity to express its appreciation to the citizens who have served on the big game advisory committee. All of their time, travel expenses, and related costs have been paid for out of their own pockets without reimbursement from the State. The splendid type of civic responsibility that they have displayed is indeed a credit to them as individuals and as a group.

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ASSEMBLY INTERIM COMMITTEE ON
MUNICIPAL AND COUNTY GOVERNMENT

House Resolution No. 326.16

**MODERNIZATION OF NONCHARTER
COUNTY LAW**

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BERT DeLOTTO, *Vice Chairman*

DON A. ALLEN, SR.

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LETTER OF TRANSMITTAL

HON. RALPH M. BROWN

Speaker of the Assembly

State Capitol, Sacramento 14, California

DEAR MR. SPEAKER: The Assembly Committee on Municipal and County Government submits herewith its report on modernization of noncharter county law, one of the studies conducted by the committee during the 1959-1961 interim, in accordance with House Resolution No 326 16 of the 1959 Regular Session.

This final report contains the findings, conclusions, and recommendations of the committee on this subject.

Respectfully submitted,

CLARK L. BRADLEY, *Chairman*
BERT DeLOTTO, *Vice Chairman*

DON A. ALLEN, SR.	JAMES L. HOLMES
CARL A. BRITSCHGI	JOSEPH M. KENNICK
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SUMMARY OF FINDINGS

The Assembly Interim Committee on Municipal and County Government conducted this study primarily to determine if a number of changes could be made in the law to allow for permissive local county procedures, first approved by the voters, which would help to streamline and make more efficient what is today admittedly good county government. This study was made in keeping with the spirit of the "Principles of County Home Rule" as developed and pronounced by the County Supervisors Association in 1957, which hold in part

The California tradition of local home rule and self determination as applied to county government should be continued and strengthened. It should find further expression in the Constitution and the statutes. Particularly, a general law on county government should permit wide flexibility wherever possible so that resort to a charter is not necessary to achieve simple modernization.

In essence, the principal proposals under study were to: (1) provide that certain of the traditionally elected county officers may be appointed; and (2) provide for the office of county executive.

I. APPOINTMENT OF COUNTY OFFICERS

1 The Legislature now requires that ten (10) county offices shall be elective, in addition to the board of supervisors, in a noncharter county. There are the offices of district attorney, sheriff, county clerk, auditor, treasurer, recorder, tax collector, assessor, public administrator, and coroner. The Legislature also requires the office of county surveyor to be elective unless the board of supervisors adopts an ordinance providing for the appointment of the surveyor by the board. One additional office, that of county superintendent of schools, is required to be elective by the State Constitution.

2 Counties have increasingly added to their traditional activities a number of major functions which are in many cases now administered countywide. Some of these are public health, welfare, hospitals, tax assessment and collection, libraries, and mental health. These new functions of the present-day county government, which are of equal or greater importance than the functions of the traditionally elective officers, are administered on the whole by appointive officers.

3 The voting record for elective county officers seems to be indicative of a lack of interest in them on the part of the public. A large percentage of the incumbents run unopposed at election time. Research discloses that nearly 50 percent of the present incumbents were originally appointed by the board of supervisors due to death, resignation, etc., of the incumbent, and then the appointees nearly always remain in office by winning voter approval, often with no opposition at the following election.

4 It should not be necessary to resort to a charter in order to achieve simple modernization in county government. Experience has shown that charter drafting is a difficult and time-consuming business. Unless drafting is done with extreme care, ambiguous language may be written in, or new phrases used, which will be difficult for future legal advisers and judges to interpret.

5 Arguments in opposition to the appointment rather than election of county officers centered around the following: the appointment of elective officers is a step in the direction of centralization of government; it violates home rule principles by removing from the electorate the right to select their representatives or remove them from office and it is only normal that an appointive official would be influenced by those who appoint him, while an elected official must answer to the public during and at the end of his term of office.

6 The proponents of the appointment theory rely on the following arguments: if a board of supervisors is going to be held accountable for the operation of the county government, then there should not be a diffusion of political responsibility in the county; elected positions should be limited to those that are required for policy-making purposes or for checks and balances; some of the sound practices in business enterprise have to be applied to government; the people actually lose rather than gain control of their local government through diffusing political responsibility; and general law counties should be granted the permissive right, subject to the vote of the electorate, to determine their own governmental structure.

7 Witnesses generally agreed that three officers should continue to remain elective, the district attorney, the assessor, and the sheriff.

II. THE COUNTY EXECUTIVE

1 The need for some kind of central administrative office in county government is clearly brought out by the fact that 36 of the 58 counties in the State have adopted such an office. These counties have generally proceeded under Section 25208 of the Government Code which authorizes a board of supervisors to employ such persons as it deems necessary to assist the board in the performance of its duties and to adopt an ordinance defining the qualifications, duties and responsibilities of such person.

2 The administrative officer plan has been used quite extensively in California by the cities in the form of city manager-council type of government. It has been argued that such an alternative form of government which has been available to noncharter cities since 1927 should be made available to noncharter counties.

3 Generally speaking, witnesses were in accord with a plan which would set up some type of administrative office in county government.

4 As to what type of administrative office should be set up and what powers and duties should be assigned, there was a definite difference of opinion. On one side of the spectrum were the representatives of some of the statewide organizations of elected officials such as county treasurers, etc., who were in favor of the plan in general so long as the powers given to that office did not exceed those imposed upon a board of supervisors or those given to any of the presently elective officials. On

the other side were those who desired legislation which would create a strong administrator having similar powers to a city manager. Others took the middle view that if such a plan were to work successfully it must have the full support and consent of the board of supervisors and such support and confidence must be vested in the individual holding such a job, and therefore no legislation should be attempted on a state-wide basis spelling out in detail the duties and powers of such an administrator. If that were done, it might result in limiting certain county efforts along this line. Instead, each county should be given the opportunity to work out its own system tailored to individual situations and conditions of the individual county.

RECOMMENDATIONS

On the basis of the evidence presented to the committee by witnesses in the course of the hearings, as well as independent study and research conducted by the committee's staff, the following recommendations are hereby submitted:

1. Permissive legislation should be introduced enabling boards of supervisors in noncharter counties to place on the ballot the question of whether certain presently elective officials should be appointive.

2. As a result of such legislation, the board of supervisors in non-charter counties may have the power to submit at any general or special election, the question whether one or more of the following officers shall be appointed by the board of supervisors:

- (a) County clerk;
- (b) Public administrator;
- (c) Tax collector,
- (d) Auditor;
- (e) Treasurer;
- (f) Recorder;
- (g) Coroner

3. In view of the fact that more and more counties in this State are now adopting some form of administrative office, and since many of these plans must be tailored to fit individual needs and conditions within each county, the committee believes that any attempt to put into the law at this time a detailed provision providing for the creation of such an office and setting forth the powers and duties of the office might hinder the efforts now under way in this direction.

4. The efforts of county government in establishing the office of county executive should be continuously watched and studied so that the progress and results in one county may be passed on to other counties attempting the same program. Also in the future, further study should be given to this problem to determine if county government had made sufficient progress in this area under present general law and if not, whether it would be necessary for the Legislature to assist them with more specific legislation authorizing the position of county executive and prescribing the powers and duties of such an office.

I. INTRODUCTION

A. BACKGROUND INFORMATION

During the interim of 1957-1959 this committee spent a considerable amount of time studying various proposals which would modernize non-charter county law. That study was the first significant one to be made of county government since that of the California Commission on County Home Rule which 30 years ago urged the State Legislature to adopt a plan for optional forms of county charters. Although no major reforms have been made in the law for many years, nevertheless, county government in California has endeavored to keep up with the tremendous needs of one of the fastest growing states in the Union.

Counties have increasingly added to their traditional activities a number of major functions which are in many cases now administered countywide. Some of these are public health, welfare, hospitals, tax assessment and collection, libraries, and mental health. In the unincorporated urban areas counties are being called upon to provide municipal-type services of all kinds, with a necessity in many cases of having to rely on the special district device.

Only 11 of the 58 California counties have adopted charters. They are Los Angeles, Alameda, San Diego, San Francisco, Santa Clara, San Bernardino, Sacramento, San Mateo, Fresno, Butte, and Tehama. The remaining 47 counties in the general law, or nonchartered county category, range in size from a population of 360 in Alpine County to 710,000 in Orange County.

After its interim study of 1957-1959 the committee filed a report with the Legislature embodying the following recommendations:

On the basis of the evidence presented to the committee by witnesses in the course of the hearing, as well as research work independently conducted by the committee's staff, the following recommendations are hereby submitted:

- 1 The board of supervisors should have the power to provide by ordinance that the following elected county officers shall be appointed by the board:
 - (a) County clerk;
 - (b) Public administrator;
 - (c) Tax collector;
 - (d) Auditor;
 - (e) Treasurer;
 - (f) Recorder;
 - (g) Coroner.
- 2 The board of supervisors by resolution, or the people by initiative methods, should have the power to submit to the voters for their decision an ordinance providing the board of supervisors with the power to appoint the following elected officers:
 - (a) Sheriff.
 - (b) Assessor.

- 3 A set of mandatory minimum qualifications should be provided by the Legislature for each county officer listed in recommendations 1 and 2, except the auditor. The qualifications for auditor as provided for in Section 26945 of the Government Code should be made mandatory.
4. The board of supervisors by resolution, or by the people, through the use of the initiative, should have the power to submit to the voters the issue of providing by ordinance for the office of county executive. The Legislature should set forth the powers and duties of such office.
- 5 The district attorney should remain an elective position.

As a result of this interim report the following two bills were introduced by Chairman Bradley in the 1959 Session of the Legislature: (Legislative Counsel's Digest)

- 1 A B 922—(as originally introduced) authorized the board of supervisors to submit to the electorate the question of whether county offices of treasurer, county clerk, auditor, tax collector, recorder, public administrator, or coroner shall be appointed by the board of supervisors as prescribed, rather than elected.
2. A B 2488—allows the board of supervisors of any county to establish the office of county executive. Provides for appointment of the officer by the board of supervisors. Prescribes the duties of the officer.

During the session, A B. 922 was amended to exempt the auditor from appointment. However, neither bill passed but were referred back to this committee for further interim study.

B. PROGRAM OF STUDY AND METHOD OF INQUIRY DURING THE 1959-1960 INTERIM

In view of the fact that the subject matter of the two major bills of the 1959 General Session dealing with the modernization of noncharter county law were referred to the committee for further interim study, the chairman, Assemblyman Clark L. Bradley, decided to reinstitute the committee's study on this subject. Shortly after the first organizational meeting of the committee to set up its interim program, Mr. Bradley announced this decision in a speech given before the annual convention of the California Supervisors Association in San Jose in September 1959 by stating:

Our committee is also interested in any problem of the General Law County and will welcome the suggestions of the counties. We feel that a number of changes could be made in the law to allow for permissive local county procedures, first approved by the voters, which would help to streamline and make more efficient what is today admittedly good county government. There are some people who seem to fear that permissive legislation of this sort will lead to a removal of voter control in local government.

In particular, the words "metropolitan government" have been charged with meaning highly centralized government, whether it be county level, city level, or a combination of both.

Unfortunately, this attitude by some of the public is not based on sound grounds of logic and common sense, but is too often a complete lack of either. For example, we have had an illustration of metropolitan government in California for years in the legal entity of the City and County of San Francisco. Yet in the last session several bills were deluged with opposition mail because they proposed changes in the general law for permissive adoption of some of the features of the charter of the City and County of San Francisco.

Much of this public fear is due to a few individuals whose political philosophy seems to be that if they are to be remembered in history as having done something in the field of political science, then they have to suggest extreme changes, hence they have talked and written of future "metropolitan government" in the United States which would encompass several states—much less several counties within a state—and have also suggested a high degree of appointive department heads, as contrasted to elected department heads. The difficulty is in separating the grain from the chaff.

I believe certain county offices should remain elective, others should be put on the basis of being appointed by a responsible county executive, or head, after the voters in the county have approved such a change. The objective should be good, representative local government, efficiently and economically operated under the scrutiny of an experienced and adequately paid board of supervisors, directly elected by the voters.

In furtherance of this decision to continue the study of modernization of noncharter county law and after advance conferences, programming, and notification by letter and through the local newspapers and news services to all interested parties known to the committee, a hearing was held in Sacramento on June 15, 1960. Each letter of invitation sent out by the committee requested the individual or organization, as the case may be, to present testimony on the following two proposals:

- a The possibility of providing that certain of the presently elected county officers may be appointed by the board of supervisors.
- b The possibility of providing for the creation of the appointive office of county executive.

It was further stated in the letters of invitation that these matters were basically the subject matters of A B No. 922 and A B No. 2488 of the 1959 General Session. A transcript of the proceedings was later published and distributed to the public in the summer of 1960.

In addition, the committee held one final study session on this matter in Los Angeles on October 26, 1960. The purpose of this meeting was to hear from the official representatives of the California Supervisors Association as to their recommendations on the subject of appointive vs. elective officers. A transcript of that session was published and distributed to the public in the fall of 1960.

II. APPOINTMENT OF COUNTY OFFICERS

The more controversial subject under consideration was the possibility of providing that certain of the presently elected officers could be appointed by the board of supervisors after, of course, the voters had approved such offices for appointment.

The Legislature now requires that ten (10) county offices shall be elective, in addition to the board of supervisors, in a noncharter county.¹ They are the offices of district attorney, sheriff, county clerk, auditor, treasurer, recorder, tax collector, assessor, public administrator, and coroner. The Legislature also requires the office of county surveyor to be elective unless the board of supervisors adopts an ordinance providing for the appointment of the surveyor by the board. One additional office, that of county superintendent of schools, is required to be elective by the State Constitution.

There were divergent viewpoints given by witnesses at the hearing as to the specific officers that should remain elective. The proponents for reducing the number of elected officers were in agreement basically that probably no more than three, the district attorney, assessor, and the sheriff should remain elective.

Those favoring the proposal of appointive vs. elected officers, on the whole, stated that only those offices which were purely administrative in nature should be made appointive and that those which are needed for the everyday check and balance system of local government should be kept elective. The main argument for such a position is exemplified by the following testimony by Harry L. Morrison, Jr., Executive Director, Contra Costa County Taxpayers Association:

Business organization has shown the impossibility of having the stockholders of a company elect from their ranks the sales manager, production manager or controller, for highly technical positions and to expect their company to operate either efficiently or to make a profit. The same principle holds for the offices of county clerk, recorder, treasurer, tax collector, coroner, public administrator and auditor-controller. Such offices are truly ministerial in function and have little discretionary power. There are few, if any, issues upon which candidates for these offices can run and their need for independence, under controls already established by state statute and under the close control of the county auditor-controller, county grand jury, local taxpayers' associations, etc., leaves little fear of these offices being used in a fashion to be detrimental or in malfeasance of the public trust.

On the whole the main opposition came from the following state organizations who opposed any legislation which would make the offices they represent, or elective officials generally, appointive: the County Recorders' Association, the County Auditors' Association, County Treasurers' Association, the County Clerks' Association and the Sheriffs' Association.

The fact that by appointing most of these county officers, local government would be further removed from the control of the people, was

¹ Government Code, Section 24009

brought out by those opposing this proposal. This thought was emphasized by the following statement made by Delavan J. Dickson, Treasurer of San Diego County, representing the State Association of County Treasurers:

In principle, the treasurers are opposed to changing from an elective to an appointive office since it is a step in the direction of centralization of government. It removes from the electorate the right to select or remove from office their representatives and it is only normal that appointive officials would be influenced by those who appoint them while elected officials must answer to the public at the end of each term as well as during their term of office.

It was felt by others that the popular assumption that local control is achieved by electing a large number of county officers is not always so since the record shows that many of these officers are re-elected year after year with no opposition. This was clearly brought out by the following testimony of Stanley Scott, Assistant Director, Bureau of Public Administration, University of California, Berkeley, in stating one of the reasons for considering the appointment of county officers as an alternative to election:

. . . The election of many of the officers has lost its meaning because much of the time there is no contest. The following figures show the proportion of contested races for various county offices on the June 1958 primary ballot:

Office	Percent contested
Surveyor	7
Treasurer	10
Recorder	24
Clerk	26
Tax collector	28
Auditor	28
Public administrator	29
District attorney	36
Coroner	37
Assessor	42
Sheriff	61
Supervisor	81

Note the marked difference between the supervisors and all other officers. Only the sheriff comes anywhere near the supervisors' 81 percent, and the next highest office, that of assessor, stimulates only one-half the percentage of contests that the office of supervisor does.

It was mentioned by some that those counties desiring to appoint most of their officials and provide for a strong county executive should perhaps adopt a charter, rather than set up an alternate form of government for the general law county. Mr. Stanley Scott stated several reasons why this would not be desirable:

"Many counties may be reluctant to assume the major responsibility of drafting a complete new charter. It is possible that desirable reorganization would be facilitated if they could be installed under the general law and without making the complete break now required by the adoption of a charter.

Charter drafting is a difficult, time consuming, and tricky business. Witness the struggles and mishaps Santa Clara County ex-

perienced a few years ago while in the process of drafting and adopting a charter. Charter drafting is also often fruitless, as when a charter is prepared after thousands of man-hours of effort on the part of the board of freeholders, staff and others, only to be defeated at the polls. The recent Marin County and Riverside County failures are two cases in point. The drafting and enactment of alternative *general law* provisions for county organization would represent a great saving in time and effort for all concerned.

Unless the drafting is done with extreme care, ambiguous language may be written in, or new phrases used which will be difficult for future legal advisers and judges to interpret."

However, in addition to the above mentioned testimony and others, the committee received testimony from the County Supervisors Association. At the June 15 hearing their representatives listened with great interest, and Supervisor Walter G. Merrill, Santa Cruz County, representing the association, stated that his organization has run into obstacles, stumbling blocks, and thus were not prepared to offer anything at that time, but they would have some concrete recommendations at a later date.

In October of 1960 the committee heard from Supervisor Norman S. Foley of Fresno who set out the recommendations of the County Supervisors Association on the subject of modernization of noncharter county law. Since this presentation contained many background statements showing the developments that led up to the recommendation, and the many factors, thoughts and opinions that were taken into consideration in arriving at the conclusions, and, especially since this statement seems to represent the basic thinking of most of the members of the committee, as expressed at the October meeting when the committee, after hearing the statement, recommended the reintroduction in the 1961 session of the appointive vs. elective proposals contained in A. B. 922 of the 1959 session, it was thought best to set out this statement in this report.

STATEMENT BY COUNTY SUPERVISORS ASSOCIATION OF CALIFORNIA ON MODERNIZATION OF NONCHARTER COUNTY LAW

By NORMAN S. FOLEY, Supervisor, Fresno County, Chairman, CSAC
Government Operations Committee

Mr. Chairman and members of the Committee: We also recognize that you accommodated us when this committee held a hearing in Sacramento on June 15, 1960, in conjunction with the June Institute of the County Supervisors Association of California. At that hearing, the agenda called for consideration of the problems of (1) modernization of noncharter county law and (2) special districts. Supervisor Walter G. Merrill of Santa Cruz County spoke for the Government Operations Committee of the County Supervisors Association that day. Mr. Merrill respectfully advised your committee that the Government Operations Committee had the matter of modernization of noncharter county law under intense study and that we would present our recommendations and legislative program for 1961 to you at this, your fall meeting.

The Government Operations Committee has devoted 1960 to a complete review of the problem of modernization of noncharter county law. Rather than approach the subject piecemeal, the Government Operations Committee—composed of supervisors representing 33 counties—determined that we should “start from scratch” and think through again the many and divergent positions, arguments and considerations involved. The committee knew only too well that a study of this nature would go to the very basic structure of county government and therefore that it deserved nothing less than a major review. As a result of the “great debate” that raged both within and without the county family we are prepared today to make what we believe is an important recommendation in furtherance of modernized county government. But as a prelude to submitting the recommendation, it is our thought that your committee would desire a brief resume or background statement of the developments that led up to the recommendation and the factors, thoughts and opinions that were taken into consideration in arriving at our statement of position.

The subject of modernizing noncharter county law was a major agenda item at the April 28, 1960, meeting of the Government Operations Committee. At that meeting, a lengthy and stimulating discussion of all the issues by the supervisors was preceded by comments from persons quite knowledgeable in the field of local government. M. D. Tarshes, County Executive of Sacramento County, advocated appointment rather than election of most county department heads, stressing that elected offices should be limited to basic policymaking officials. At the same time, Mr. Tarshes supported the election of local officials where necessary to preserve essential checks and balances. In so stating, Mr. Tarshes made clear his belief that government is not taken out of the hands of the people by providing for the appointment of nonpolicymaking officials; rather, he feels that the people are given closer control over their government by centralizing responsibility in the elected board of supervisors and by vesting in the members of the board of supervisors the powers to carry out the job they are elected to do. Mr. Milton Farrell, Administrative Officer of Colusa County, and formerly consultant to your committee, supported Mr. Tarshes in his approach to the problem, stating in effect that the board of supervisors should be charged with the responsibility of running the county and should be given the actual power to do so. Mr. Daniel J. Curtin, Jr., your very capable committee consultant, was kind enough to be present at the meeting and he acquainted the Government Operations Committee with the present and future activities of your committee in this field and provided valuable background information on the many recommended approaches to this problem.

A special Government Operations Committee staff paper provided a foundation for enlightened consideration of the subject of elected vs. appointed officials in noncharter counties with this brief summary of the Constitution and statutes. The staff paper reminded the committee that under the California Constitution the

Legislature shall provide for the election or appointment of (1) boards of supervisors, (2) sheriffs, (3) county clerks, (4) district attorneys and such other county officers as public convenience may require. Government Code Section 24009 provides that in general law counties elected officers shall be the treasurer, county clerk, auditor, sheriff, tax collector, district attorney, recorder, assessor, public administrator and coroner. Thus, it was made clear that in accordance with the constitutional mandate the Legislature, in Government Code Section 24009, had provided for the election of county clerk, sheriff and district attorney. The constitutional mandate with reference to supervisors is met in Government Code Section 25000 where the law calls for the election of members of the board of supervisors. It was noted, however, that under the California Constitution only the county superintendent of schools *must be* an elected officer in general law counties—there is no constitutional *requirement* that any of the other county officers be elected. Then finally, it was pointed out that under Government Code Section 27550 the county surveyor shall be elected unless the board of supervisors provides for his appointment by the board.

The committee also had the benefit of a brief "refresher" on the conclusions of the Assembly Interim Committee on Municipal and County Government after your study of 1957-1959. The committee was reminded that your final report embodied a recommendation that the board of supervisors should have the power to provide by ordinance that the following elected county offices shall be appointed by the board: county clerk; public administrator, tax collector; auditor; treasurer; recorder and coroner. It was also your recommendation that the board of supervisors, by resolution, or the people by initiative methods, should have the power to submit to the voters for their decision an ordinance providing the board of supervisors with the power to appoint the elected sheriff and assessor.

The committee was further reminded, however, that A B 922 in the 1959 Legislature, sponsored by Mr. Bradley, as amended, provided that at any general or special election, the board of supervisors may submit to the electors the question of whether one or more of the county officers designated in the Government Code Section 24009 shall be appointed by the board of supervisors. Exception was made in the bill for the assessor, district attorney, auditor and sheriff. Based on a recommendation from the Government Operations Committee the Board of Directors of the County Supervisors Association endorsed A B 922. Of course, you are very familiar with the legislative history that saw A B 922 pass the Assembly but fail of passage on the Senate side.

In order to assure that the Government Operations Committee would take into consideration and give weight to every significant development on this subject we even published the results of the June 1960 election. We spotlighted the fact that Sacramento County rejected charter amendments to make the auditor and sheriff appointive; that Kern County rejected, by a 4 to 1 vote, a referendum proposing that the elected auditor be replaced by

an appointive county director of finance; and that Alameda County rejected, by almost a 2 to 1 vote, a charter amendment to make the county's elected superintendent of schools appointive. In our study every effort was made to lay out for the supervisors *all* of the developments, *all* of the facts and *all* of the arguments pro and con on the crucial question of elective v. appointive county officials.

As noted earlier, on June 15, 1960, just two weeks after the interesting and informative election of June 1960 your committee met and heard no less than 31 witnesses representing the widest divergence in backgrounds and opinions, on the subject of elective v. appointive officials in noncharter counties. Careful analysis of the voluminous transcript of that hearing indicates that the central themes of the arguments of the "pros" and "cons" can be cap-sulized as follows:

Witnesses favoring appointment:

- (1) If a board of supervisors is going to be held accountable for the operation of the county government, then there should not be a diffusion of political responsibility in the county
- (2) Elected positions should be limited to those that are required for policy making purposes or for checks and balances
- (3) Some of the sound practices in business enterprise have to be applied to government.
- (4) The people actually lose rather than gain control of their local government through diffusing political responsibility
- (5) Qualification in certain positions is more important than running for election.

Witnesses opposing appointment:

- (1) The appointment of elective officers is a step in the direction of centralization of government.
- (2) It violates home rule principles by removing from the electorate the right to select or remove from office their representatives
- (3) It is only normal that an appointive official would be influenced by those who appoint him while an elected official must answer to the public during and at the end of his term of office

A staff paper summarizing the transcript of proceedings of your June hearing served to acquaint the supervisors with the various persons and organizations associating themselves with either of these basic views.

Only after this tremendous background, then, of study and debate—only after this lengthy and thorough airing of this problem—did the Government Operations Committee proceed to its meeting of September 1, 1960, where the leading agenda item raised the question "Shall the committee recommend legislation

enabling boards of supervisors in noncharter counties to place on the ballot the question of whether certain elective officials should be made appointive?"

In one last effort to make sure that we had heard and considered every viewpoint I, as chairman, urged the members to consult in advance of the meeting with all elective officials in their county who might be affected by such legislation. At the meeting of September 1, 1960, based on the conscientious months of study which I have outlined for your committee, the Government Operations Committee recommended to the Board of Directors of the County Supervisors Association of California as follows:

That the board of directors reaffirm its present policy, last stated in 1958, in support of *permissive* legislation enabling boards of supervisors in noncharter counties to place on the ballot the question of whether certain elective officials should be appointive.

At its meeting on September 2, 1960, the board of directors did unanimously adopt our recommendation and it is now a matter of firm association policy.

As chairman, I think I fairly capture the consensus of the Government Operations Committee when I say that our deliberations brought into play a "weighing" proposition. We recognized the sincerity and the interest of advocates on both sides of the issue and we agreed that much can be said for both viewpoints. Our sole desire was to make a recommendation in the best interests of strengthening county government for the tasks that lie ahead. With that overriding test in mind, the "permissive" feature of the proposed legislation probably tipped the scales in favor of a recommendation that would make this avenue open to counties wherein the people themselves may vote to authorize the reshaping of government. We felt that county government must have available to it a process whereby a duly elected board of supervisors—the chosen representatives in whom the people have reposed confidence—can in effect say to the electorate:

"We sincerely believe that your interests will be best served and our government will be more closely and efficiently in your hands if certain officers, *with your permission*, are made appointive rather than elective. What do you think?"

The people can then speak through the ballot and their voice shall be conclusive.

The recommendation of the Government Operations Committee, embodying as it does the "permissive" home rule feature, is entirely in keeping with the spirit of the now famous "Principles of County Home Rule" as developed and pronounced by the County Supervisors Association in 1957. These landmark principles—proclaimed after the closest study of the status and future of county government—hold that

"The California tradition of local home rule and self determination as applied to county government should be continued and strengthened. It should find further expression in

the Constitution and the statutes. Particularly, a general law on county government should permit wide flexibility wherever possible so that resort to a charter is not necessary to achieve simple modernization.

"Counties should be free to devise their own internal organization, either under a charter or under general law.

To assure direct responsibility to the people and to enable the enforcement of such responsibility, general control of county government should be placed wholly in the board of supervisors."

We believe that the "permissive" legislation that we have recommended will provide the "flexibility" that the county home rule principles advocate. If the electorate feels that by the appointment of certain elective officials the government will be "continued" and "strengthened" then the public should be able to effect the modernization. Our recommendation does not dilute home rule principle, to the contrary, it breathes new life and spirit into those principles. We sincerely believe that the proposed legislation will bring government closer to the people and that it will provide a needed alternate route which the people can travel in an effort to modernize and perfect county government.

Mr. Chairman, on behalf of the County Supervisors Association of California, I thank you and the members of your committee again for this opportunity to acquaint you with our activity during 1960 on the question of elective versus appointive county officials and with our recommendation for the 1961 Legislature. My sincere hope is that by our efforts in this field we have served to render some assistance to your committee as you labor to develop a legislative program that will benefit the people of the State of California.

In summation, the election versus appointment method of selecting county officers has received considerable attention in recent years. Many believe that most of these positions are predominantly ministerial, rather than policymaking. Testimony supported the theory that the public would be better served and actually have more local control by authorizing county supervisors, subject to approval by the electorate, to provide for the appointment of these officers so that noncharter county organization could operate as an integral unit of local government, according to accepted modern management practices, and still maintain the basic concepts of county home rule. Therefore, the committee recommends the reintroduction of permissive legislation enabling boards of supervisors in noncharter counties to place on the ballot the question of whether certain elective officers should be appointive.

III. COUNTY EXECUTIVE

The second major subject under consideration was the possibility of providing for the creation of the appointive office of county executive, so that noncharter counties might have the same type of management that general law cities were authorized to have as an alternative back in 1927.

As mentioned in the introduction, this proposal had been embodied in A B 2488 of the 1959 Session and had been rereferred to this committee for further study. All the witnesses in their letters of invitation to testify were asked to comment on the subject matter of A B. 2488 and the plan in general. Therefore, so that the reader can get a better grasp of the whole picture the provisions of A B 2488 are herein included.

California Legislature, 1959 Regular (General) Session

ASSEMBLY BILL

No. 2488

Introduced by Mr Bradley

April 15, 1959

REFERRED TO COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

An act to add Chapter 14 (commencing at Section 27750) to Part 3, Division 2, Title 3 of the Government Code, relating to counties

The people of the State of California do enact as follows:

SECTION 1 Chapter 14 (commencing at Section 27750) is added to Part 3, Division 2, Title 3 of the Government Code, to read

CHAPTER 14 COUNTY EXECUTIVE

27750 The board of supervisors of any county may establish the office of county executive. The county executive shall be the chief administrative officer of the county.

27751 In a county in which the office of county executive is established, the county executive shall be appointed by the board of supervisors to serve at its will. The county executive shall be

chosen on the basis of his executive and administrative experience and qualifications.

27752 The county executive shall be the head of the administrative branch of the county government. He shall be responsible to the board of supervisors for the proper administration of all affairs of the county.

27753 The county executive shall:

(a) Attend all meetings of the board of supervisors, with the right to participate in the deliberations of such board, except when it is considering his removal, but to have no vote.

(b) Co-ordinate the work of all offices, institutions and departments of the county, both elective and appointive and devise ways and means whereby efficiency and economy may be secured in the operation of all offices, institutions and departments.

(c) Supervise and direct the preparation of the annual budget of the county for the board of supervisors and be responsible for its administration after adoption.

(d) Formulate and present to the board of supervisors plans for the future growth and development of the county and for the expansion of public works and services made necessary thereby.

(e) Prepare and submit to the board of supervisors, as of the end of each fiscal year, a report on the finances and administrative activities of the county for the preceding year, together with such recommendations as he may see fit to make for the betterment of public service.

27754 He shall also:

(a) Establish a centralized purchasing system for all county offices, institutions and departments.

(b) Have charge of all county property, buildings, works and improvements, including but not limited to the recreation areas of the county.

(c) Make temporary transfers of employees from one county office, institution or department to another when, in his opinion, the workload requires the same.

(d) Perform such other duties as is required of him by the board of supervisors.

LEGISLATIVE COUNSEL'S DIGEST

A B 2488 as introduced, Bradley (Mun. & CG) County Executive

Adds Ch. 14 (commencing at Sec. 27750), Pt. 3, Div. 2, Title 3, Gov. C

Allows the board of supervisors of any county to establish the office of county executive. Provides for appointment of the officer by the board of supervisors. Prescribes the duties of the officer.

The proponents of such a plan state that its adoption would enable them to provide their executive with strong administrative powers, which is a widely used concept in industry, in municipal government, and in a number of counties in the eight states that have adopted this plan. In California the cities have made extensive use of such a plan whereas the counties have been slower to respond. This was pointed out by the following statement of Mr. Stanley Scott:

California's general law cities may install the city manager plan by council ordinance, and home rule cities may provide for

it in the charter. Both types of cities have made extensive use of these options. In the 30 years following the first adoption in Inglewood in 1914, the council-manager plan generally had a steady growth. In the subsequent years of the post-World War II period, the numerical gain in council-manager cities has been spectacular. The total in 1960 was 184, more than four times the number of 15 years before.

County government in California and elsewhere has been much slower to respond to these movements than were the cities, the states or the federal government. Nevertheless, several of California's home rule charter counties have achieved a significant reduction in the number of their elected officials—especially Los Angeles, Santa Clara, Sacramento and San Diego * * *. Also, one of the most notable and widespread developments has been the establishment of some kind of central administrative office in 36 counties.

Those counties which have adopted some type of administrative officer plan have generally proceeded under Section 25208 of the Government Code which authorizes a board of supervisors to employ such persons as it deems necessary to assist the board in the performance of its duties and to adopt an ordinance defining the qualifications, duties and responsibilities of such person.

However, even under the above code section, noncharter counties are not able to fully utilize the services of their administrative officers due to the fact that they can only be agents of the board of supervisors, appointed by resolution or ordinance, and are without the powers usually associated with such a position in keeping with modern practices. Under the present law the duties to be delegated to such an employee are limited to those departments and matters which are presently by statute already the responsibility of and directly under the jurisdiction and control of the board of supervisors and the duties so delegated are limited to those of an administrative, ministerial and limited executive nature and to duties of the board which do not call for the exercise of discretion and judgment.

Generally speaking, the witnesses were in accord with a plan which would set up some type of administrative office in county government; in fact, only the representative of the County Recorders' Association, Ray A. Vercammen, was in total opposition to the overall plan. Some of the reasons for being against the plan were stated by Mr. Vercammen as follows:

County government is meant to be for the people and by the people—not by one man operating under the dictates of a board of supervisors that, in many instances, are operating under split decisions and representing only a portion of the people, as they are elected by districts, not the entire county as the elected county officials now are.

County governments as are now operated in the general law counties of California and some of the charter counties are truly functioning as an entity by representation of the people, and until such time as the people of each county shall voice their vote in

favor of or opposed to, said county government should not be so radically changed as is contemplated by A.B. 2488

The greatest amount of difference of opinion arose on the question of the number of powers and duties which should be given to such an administrative officer

Some of the proponents of the plan urged that such administrative officers have all the powers and duties of a strong city-manager office. Harry L. Morrison, Jr., Executive Director, Contra Costa County Taxpayers' Association, in favoring this viewpoint, stated:

. . . this bill (A. B. 2488 of the 1959 Session) gave the county executive few powers over those granted in the general law counties at present by which the board of supervisors may appoint a chief administrative officer . . . , and hence he could not be considered a manager in the same sense as interpreted by the International City Managers' Association. . . . We wish to recommend that legislation concerning the establishment of the office of county executive be made stronger than contemplated in A. B. 2488 by setting forth more specifically the duties which would give him true management powers

On the other side of the spectrum were the representatives of some of the statewide elected officials' organizations such as the treasurers, auditors, clerks and tax collectors. On the whole, they were in favor of the principle of some type of county executive form of government, so long as the powers given to that office do not exceed those imposed upon a board of supervisors or those given to an elective official. This position was exemplified by the following statement from Edwin Meese, Jr., representing the County Tax Collectors' Association.

In numerous counties the position of county executive has proved its value as a factor in furthering the efficient administration of county affairs. The County Tax Collectors' Legislative Committee reviewed A. B. 2488 and, in general, has no quarrel with the proponents of the county executive officer proposal provided the executive's duties do not encroach upon the authority expressly vested in the elected or appointed county officer who, by his oath of office and official bond, is personally and solely responsible for the operations of his office

A middle ground approach between the two views on how powerful this officer should be, and what his duties should consist of, was taken by other witnesses. The following statement made by Robert C. Brown on behalf of the California Taxpayers' Association embodies such an approach

We clearly recognize that the establishment of such an administrative office in counties suitable for centralized authority is, beyond a doubt, one of the best contributions to bringing about a better understanding and certainly a better performance, on the part of county government. There have been to date a wide variety of titles and ordinances used in setting up this office. You should realize that in some cases it is a combination of the ordi-

nance and the individual that has made this office the success it has become. In others, the main factor involved has been the individual; and in still others, it has been the ordinance which has enabled the individual to grow in understanding and performance with the office. Regardless of any combination of these factors, it takes a board of supervisors which is wholeheartedly in support of a chief administrative officer operation if it is to be successful.

Talking directly now to A. B. 2488, speaking not in detail but in general terms, I submit the following. Many of the sections covered in this bill are used practically word for word in many of the ordinances adopted by counties to date. There is, however, one significant difference—a difference we feel is a real important one, and that is: if A. B. 2488 were adopted by the Legislature and enacted into law, this would in effect cause general law counties to write an ordinance governing the operation of this important function on a much too rigid basis. We believe in order to keep pace with the changing times, counties would repeatedly have to come to the Legislature to amend this section. This would, in effect, make the county government too rigid. Here again, it is imperative that these offices be set up tailored to the individual situations and conditions of individual counties. We do not believe in this case you would be doing justice to general law counties if you adopt legislation as rigid as this purports to be. It also appears to us that the effect of adopting this proposal would be to permit a board of supervisors to write what amounts to a charter, or a portion of a charter, without a vote of the people.

So, in conclusion of our statement on the executive officer function, let me say this: if it is your desire to legalize something that has been going on for many years, then we do not feel that the A. B. 2488 approach is the best way of doing so. We would urge you to simply add a section to the code making it permissible for counties to establish such an office. This is just another situation where the function would best serve the individual areas if the drafting in a detailed sense were left to the people who have to abide by it.

In support of this middle ground approach, M. D. Tarshes, County Executive of Sacramento County, made the following statement:

I agree with Mr. Brown who spoke previously that the bill goes into too much detail. These jobs have operated successfully when they have operated with the full consent and the full support of the board of supervisors, and any job of this type requires that support of the board and the confidence of the board in the individual who is in the job. I think it would be more advantageous to have a very broad statute of the type that Mr. Brown suggested which would just authorize this type of office to be established in a county without going into any great detail. I would only hope that such action by the Legislature would not cast any doubt upon the legality of the actions taken by boards of supervisors in the past without this legislation. I think it has been pretty generally

conceded by county counsels that a statute of this type has not been necessary.

In summation, it seems apparent that the county executive plan is an advantageous asset to local county government since creation of the office provides the board of supervisors with an agent to assist with its administrative duties and carry out its policies. However, more and more counties in this State are now adopting this plan on their own under the general provisions of Government Code Section 25208 and this type of procedure has been approved by the Attorney General in Opinion No. 55-88 of July 21, 1955. At this time the committee feels that it might not be in the best interest to put into legislation a bill setting out the powers and duties of such an officer which might result in discouraging county efforts along this line. However, the efforts of county governments in establishing the office of county executive should be continuously watched and studied so that progress and results in one county could be passed on to other counties attempting the same program. Also, in the future, further study should be given to this problem to determine if county government is making sufficient progress in this area under the present general law, and if not, whether it is then necessary for the Legislature to assist them with more specific legislation by authorizing the position of a general law county executive and prescribing the powers and duties of such an officer.

IV. ACKNOWLEDGMENTS

At this time the committee wishes to express its appreciation to all those who testified at our June 15, 1960 hearing. Their presentations were of great assistance to the committee in its deliberations. In addition, the committee wishes to acknowledge the work of the California County Supervisors Association in restudying this whole field, especially in light of the present trends. In particular, the committee appreciates the close help and co-operation which the Government Operations Committee of the Supervisors Association, under the chairmanship of Supervisor Norman S. Foley of Fresno and with the staff help of Jack Merelman, has given to us. Their work in this field, based on a statewide study through their organization, was of great help to the committee.

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FIRE GRADING AND RATING

FINAL REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

House Resolution No 326.16

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LETTER OF TRANSMITTAL

HONORABLE RALPH M BROWN

Speaker of the Assembly

State Capitol, Sacramento 14, California

DEAR MR SPEAKER: The Assembly Committee on Municipal and County Government submits herewith its report on Fire Grading and Rating, one of the studies conducted by the committee during the 1959-61 interim, in accordance with House Resolution No 326 16 of the 1959 Regular Session

This final report contains the findings, conclusions, and recommendations of the committee on this subject

Respectfully submitted,

CLARK L BRADLEY, *Chairman*

BERT DELOTTO, *Vice Chairman*

DON A ALLEN, SR

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CHAPTER I

INTRODUCTION

A PURPOSE OF THE REPORT

During the course of the 1959 General Session of the Legislature a bill was introduced, A B 942, which provided that fire grading data be made a matter of public record. This bill did not pass and was assigned to this committee for interim study. During the initial phases of the interim study, it was discovered that there existed a great lack of understanding among legislators, public officials and the general public as to what the terms, fire grading and rating, meant and the resulting effect on governmental entities. As a result of this, the chairman thought it would be in the best interest of all concerned if the committee, as part of its interim study, could compile a comprehensive informative report on this important topic. It was contemplated that this report could be used as a basic reference material by anyone interested in this subject whether it be a student of government or an elected official who might wish to more fully understand the effect of fire rating and grading on the governmental entity which he represents.

Therefore, in light of this policy, the committee decided not to limit its study to just the proposal of having such reports made available to the public but to widen the scope so that the history, functions and procedures of fire grading and rating in California could be explained and studied.

As a result, the primary purpose of this report is to describe the function of each organization which participates directly in fire grading and rating and to define some of the terms used. This report seeks to point out the effect of fire grading and rating on governmental entities, primarily cities, and to set forth in general terms the legal framework within which these organizations operate. In addition, this report desires to clarify the processes involved in a grading survey of fire protection and prevention facilities in a given area and to show how these results are translated into insurance rates.

Also, this report outlines the more significant criticisms which have been made of fire grading and rating processes by the League of California Cities and the American Municipal Association and the answers to these criticisms by the representatives of the National and Pacific Boards.

B. METHOD OF STUDY

In November, 1959 Chairman Bradley, Assemblyman Lanterman, the committee consultant, Mr. Curtin, and Mr. Farrell the former committee consultant, met with representatives of the National Board of Fire Underwriters and the Pacific Fire Rating Bureau to discuss this subject in general. As a result of that meeting it was agreed that

the committee would hold a general hearing on this matter in Los Angeles on December 8, 1959. The main purpose of this hearing was to hear testimony from both of these organizations, from the League of California Cities and from other interested parties as to the basic history, functions and procedures of fire rating and grading in California and its effect on California cities and other governmental entities. Then the record of this hearing was to be used as source material for the preparation of this comprehensive report.

So that the representatives of the National Board of Fire Underwriters and the Pacific Fire Rating Bureau could better prepare their testimony before the committee, the committee staff prepared a list of questions to be answered by the witnesses in their presentation before the committee. The following questions which were designed to bring out the basic history, functions and procedures of fire rating and grading were asked:

- 1 Briefly, what is the National Board of Fire Underwriters?
- 2 Briefly, what is the Pacific Fire Rating Bureau?
- 3 Please explain the recent merger of the Board of Fire Underwriters of the Pacific and the Pacific Fire Rating Bureau.
- 4 What are the functions of both organizations?
- 5 Please define the term "underwriters" as it is applied to this field.
- 6 Could you point up the distinction between grading and rating?
- 7 In general, what is the effect of grading and rating on cities, counties, or a community?
- 8 What do you mean by a grading survey of fire protection and prevention facilities in a given area?
- 9 Who can ask for this survey?
- 10 How much does this grading survey cost the community?
- 11 How does the insurance industry rely on these grading reports?
- 12 How do you evaluate the factors of the grading survey?
- 13 Could you explain the standard schedule for grading and how it is arrived at?
- 14 Is it a fair and equitable fire grading schedule which can be applied to meet the conditions existing in California?
- 15 What happens when the current survey shows a substantial change in public protection since the previous one?
- 16 Is this information obtained by the inspectors made available to governmental officials? If so, just what is made available and how much?
- 17 What is the relationship of the grade to the class?
- 18 After the survey, how are the results translated into insurance rates?
- 19 Is it not true that California is practically the only state not requiring the filing of insurance rates and prior approval by the Insurance Commissioner? If this is the case, are insurance companies and/or rating bureaus in other states required to file as part of their supporting information details of the grading or fire protection?

In addition to these general questions, both organizations were requested to comment on six specific questions which, for the most part, asked for their comments on some of the criticisms of the grading system registered by the League of California Cities and the American Municipal Association. These will be discussed in detail later in the report.

The complete answers to these questions can be found in the transcript which was prepared from this hearing and which was distributed to the public in the spring of 1960.

CHAPTER II

FIRE GRADING AND RATING IN GENERAL

These two terms were defined by Al W. Gilbert, General Manager, Pacific Fire Rating Bureau, in his testimony as follows:

Grading, in a very general sense, involves an engineering evaluation of the physical properties and manpower of the fire defense system from the standpoint of its effectiveness in fire fighting and fire prevention of cities, municipalities, fire protection districts and counties.

Rating, in a very general sense, involves an engineering and actuarial evaluation of the physical makeup of individual properties, from the standpoint of susceptibility to fire loss within a city, municipality, fire protection district or county. More specifically, there are two general types of rates promulgated by the Pacific Fire Rating Bureau, as follows: (A) *Tariff or Class Rates*: Such rates rely on a broad base and minimum of variables in a simplified rating procedure. Tariff or class rating procedure lends itself most readily to large homogeneous groups of risks producing credible experience and which are spread universally over a large territory. Some notable examples of classes of risks ratable under bureau tariffs are *habitational occupancies*, schools, churches and farms. (B) *Schedules or Specific Rates*: Specific rates are the result of the application of detailed schedules devised to consider in terms of fire susceptibility, protection and prevention, the relative effect of numerous items of construction, protection, occupancy and exposure, as disclosed by physical inspection and survey of the individual risk. A battery of schedules is used in making specific rates by the Pacific Fire Rating Bureau because of the multiplicity of the classifications of risks and the measurable hazards inherent in them.

The main purpose of the grading process is to evaluate fire defenses and physical facilities in order to arrive at an insurance class. This is sometimes called a grading survey. Whereas, the main purpose of the rate-making process is to evaluate individual risks and, in the light of loss experience, determine a premium rate. The grading survey is accomplished by sending a team of trained engineers into the community to examine the various elements of fire protection, fire prevention and conflagration hazards by means of study of records, physical inventory taking, tests, witnessing of fire department operations, and the like. Complete information having been secured, the next step is to apply the Standard Grading Schedule, a means of evaluating the conditions found against certain standards of adequacy, reliability and performance.

CHAPTER III

STANDARD GRADING SCHEDULE

As mentioned in the last chapter, the Standard Grading Schedule is the yardstick used in grading any community. It is a means for translating the conditions found into a mathematical figure, which determines the classification of the city. Therefore, this schedule is definitely a major part of the grading survey.

The best explanation of the schedule is contained in the following excerpt from a pamphlet entitled, "Origin, Development, and Use of a Standard Grading Schedule for Cities and Towns, etc.", which was introduced as an exhibit at the Los Angeles hearing and was incorporated into the transcript.

Purposes of the Schedule

The schedule has been found to have practical purposes other than the mere classification of cities and towns. It provides a check on the recommendations made for improvement of fire protection facilities and a method of evaluating the conflagration hazard. Its application results in sound engineering reasons for improvements in the field of water supply and fire department operations.

Fundamental Principle

The fundamental principle of the schedule is that standards are set up for the various items affecting the adequacy and reliability of water supply systems, the various features of fire department manpower, equipment and operation, the design and operation of fire alarm systems, fire prevention ordinances and their enforcement and structural conditions, including building codes and their enforcement.

The schedule is based upon the plan of assigning to the various features covered, points of deficiency depending upon the extent of variance from the prescribed standards. The maximum points of deficiency total 5,000 and the class of the city is determined by the number of points of deficiency. The schedule provides for 10 classes, each one covering a range of 500 points of deficiency. The plan is followed in most of the boards and bureaus that have used the schedule but it lends itself readily to procedures that do not involve separations into the 10-class plan.

The Grading Schedule

The grading schedule deals mainly with the firefighting facilities of the community. These are the water supply, the fire department and the fire alarm system. It is obvious that these differ widely in kind, degree and extent, depending upon the size of the city, its location and the ability to finance them. For proper analysis of each and every community's firefighting facilities, these are subdivided in such a way that the water supply is considered in 32

items, the fire department in 34, and the fire alarm system in 23

Each of these subjects, together with fire prevention and structural conditions has a bearing on conflagration hazard of the city, combined they provide a measure of the conflagration hazard

With this subdivision of subjects into numerous items, a detailed analysis is made, not only of the features covering the adequacy of fire protection, but also of those factors of reliability which involve the chance of this adequacy being reduced by breakdown or during the time equipment must be overhauled

Each of these items outlines or defines a standard, and the deficiency is determined by comparing actual conditions with this standard

Determination of Standards

These standards were not arbitrarily set by the National Board of Fire Underwriters but are arrived at by the application of fundamental engineering principles, and follow the best practices and procedures in actual operation They were subjected to critical review by water superintendents, fire chiefs, fire alarm superintendents and others Further, as the consensus of such officials becomes settled as respects new methods or the use of new types of equipment, changes in the standards may be made Without this flexibility the modern fire department which equips itself with salvage appliances, or adopts a modern system of drills and training, could not be credited as any better than the department which is not so progressive The makeup of the schedule is such that anything of proven value will receive recognition

Fire protection is an emergency service and as such its standards must be designed to meet the most serious conditions reasonably to be expected It has been generally accepted that conditions in the grouped buildings of the business center of the community produce the most serious probability of large and spreading fires, even though in some places a grouping of buildings used for hotel purposes or for manufacturing may be of outstanding importance It is obvious therefore that the grading schedule should take into consideration structural conditions in the main business section, since they are a large factor in determining the conflagration hazard and the fire protection facilities that are needed

Influence of Structural Conditions

This study emphasized several outstanding facts which had not previously been given consideration in any attempt to classify or grade a city One was that structural conditions and hazards existing in these districts were factors which influenced the probability of serious losses irrespective of the quality of the firefighting facilities A few severe fires, the rapid spread of which was brought about by a delayed alarm, by excessive area or height of buildings, or by open stairways, and the extension of fire possible by reason of unprotected windows and narrow streets, were accounting for a high percentage of the total loss Realizing that these were factors which varied in the different cities and towns, the engineers in-

corporated, as part of the schedule, items dealing with structural conditions in the high-value area

There was some argument as to whether a section on building codes should be included. The title of the schedule indicates that it is intended to apply to existing fire defenses and existing physical conditions, whereas a building code might be expected to influence only the construction of buildings subsequent to the adoption of the code. It was finally decided, however, to include this section because of the effect it would have in encouraging the adoption of adequate laws governing construction. For the same reason, a section entitled "Fire Prevention" is included, providing for recognition of laws and their enforcement controlling the fire hazards involved in lighting, heating and industrial processes.

In order to get a fuller picture of what the schedule contains, it might be best to look at the various features contained therein and the deficiency points assigned and their relationship to the class. The relative values within the schedule and the maximum deficiency points which may be assessed for the various features considered in arriving at an insurance class are as follows:

<i>Feature</i>	<i>Percent</i>	<i>Deficiency points</i>
Water supply -----	34	1,700
Fire department -----	30	1,500
Fire alarm -----	11	550
Police department -----	1	50
Fire prevention -----	6	300
Building department -----	4	200
Structural conditions -----	14	700
Climatic conditions -----	--	--
Divergence -----	--	--

The above features are broken down into a total of 125 items, each being a subsidiary standard and each item is evaluated separately. Total deficiency points for all nine factors (125 items) weighed determines the municipality's insurance class in accordance with the following schedule:

<i>Points of deficiency</i>	<i>Relative class of municipality</i>
0-500 -----	First
501-1,000 -----	Second
1,001-1,500 -----	Third
1,501-2,000 -----	Fourth
2,001-2,500 -----	Fifth
2,501-3,000 -----	Sixth
3,001-3,500 -----	Seventh
3,501-4,000 -----	Eighth
4,001-4,500 ^{*1} -----	Ninth
More than 4,500 ^{*2} -----	Tenth

^{*1} A ninth-class municipality is one (a) receiving 4,001 to 4,500 points of deficiency or (b) receiving less than 4,001 points but having no recognized water supply.

^{*2} A class ten municipality is one (a) receiving more than 4,500 points of deficiency or (b) without a recognized water supply and having a fire department grading tenth-class, or (c) with a water supply and no fire department or with no fire protection.

There have been some criticisms made concerning the standard grading schedule. The League of California Cities in its April 1959 report on this subject mentioned the following as one of the criticisms.

It is recognized that it is easier to criticize a system than to create it. The standard grading schedule and its application has received a great deal of criticism but probably too few specific proposals for its improvement have been made. Still it is believed the first step to improvement of the grading system is to locate the weakness. Criticisms that have been made include

Some factors in the schedule are weighted too heavy, others too light. For example, maximum improvement of fire prevention practices would not reduce the grade of a city by one classification, yet fire prevention is generally acknowledged to be the greatest area in which fire loss can be reduced.

The representatives of the Pacific Fire Rating Bureau, when asked to comment on this criticism, replied as follows:

An important advantage of the schedule to both cities and insurance companies is that it is used universally throughout the United States and Canada, thus, the relative position of a city with respect to its fire defenses and physical conditions can be indicated by the classification. If a new concept or radical change were made in the schedule, it would be at least 15 years before we could again acquire the benefit of universal application since it would take that long to regrade every city in the United States. It is considered better, therefore, to make comparatively minor changes frequently enough to keep the schedule up to date by recognizing new techniques that have been proven in the fire service rather than upset the overall balance of the schedule.

We all feel that fire prevention will make itself felt in reducing loss. When the schedule was revised three years ago, the entire section of fire prevention was rewritten to give more recognition to some of the more prominent hazards. There has been no indication as yet, however, that any city has built up its fire prevention to the point where it can afford to reduce its fire fighting forces. Until this can be done, we do not feel that the balance should be weighed heavier on the prevention side.

Another major criticism of the Standard Grading Schedule was registered by Arthur Saltzstein, Administrative Secretary to Mayor Frank P. Zeidler, Milwaukee, Wisconsin. This was one among many which Mr. Zeidler made in a statement on behalf of the American Municipal Association, before the Subcommittee on Anti-Trust and Monopoly Legislation, Judiciary Committee of the United States Senate on May 29, 1959. He stated:

The grading schedule is slanted entirely toward the protection of property. This is contrary to the dual mission of the fire service—the protection of life and property, with life saving being uppermost. Perhaps if the code were the product of the life underwriters, it would be substantially different. As an example, a careful reading of the code will fail to reveal any specific requirement for life nets, though their importance is demonstrated every year. A city official reading the Grading Schedule receives the impres-

sion that he can have a Class I fire department without carrying life nets. To anyone versed in day-to-day operations, that is patently foolish.

When the representatives of the National Board, during the Committee hearing in Los Angeles, were asked to comment on Mr. Saltzstein's statement, they replied as follows:

It is not accurate to state that the Standard Grading Schedule is slanted entirely toward the protection of property. Measures relating to safety of life cannot be separated from those designed to reduce property loss.

One of the best measures that could be taken to prevent property losses would be to direct a stream of water on a fire in its early stages. The same measure would be equally efficacious in preventing injury or loss of life.

The specific comment was made that the Standard Grading Schedule does not require life nets to be required by a fire department. "To anyone versed in day-to-day operations, that is patently foolish." This reveals a rather striking lack of knowledge of the Grading Schedule and the method of its application. The Standard Grading Schedule is a relatively brief document which states general principles and general standards used to evaluate fire protection facilities and physical conditions. It is not a design handbook, a specification document or a detailed treatise on fire protection in all its phases. It presupposes knowledge, experience, judgment, and the use of other appropriate standards in its application. In considering fire apparatus and the equipment carried on it, grading engineers make use of a supporting standard entitled "Suggested Specifications of the National Board of Fire Underwriters for Motor Fire Apparatus, as Recommended by the National Fire Protection Association and Approved by the International Association of Fire Chiefs, dated August, 1958." In this standard will be found extensive specifications for motor fire apparatus of various types and a recommended list of equipment to be carried. Reference to the list of equipment will show that it includes life nets as well as resuscitators, respiratory protective equipment, forcible entry tools, and many other items having a direct bearing on rescue work and safety to life.

We should perhaps mention here that the use of supporting standards generally accepted in their respective technical fields is common practice in applying the schedule. These would include the National Electrical Code, National Building Code, the Recommended Fire Prevention Code of the National Board, and standards of the National Board and National Fire Protection Association on the safeguarding of specific fire hazards. In the fire alarm field the Schedule again requires certain performance standards, the details of which are implemented by the use of National Board Pamphlet No. 73, "Standards of the National Board of Fire Underwriters for the Installation, Maintenance and Use of Municipal Fire Alarm Systems as Recommended by the National Fire Protection Association, dated July, 1958."

CHAPTER IV

RATE-MAKING PROCESS

Rate-making is a complicated and technical process which is understood fully only by those technicians who work in this field. Therefore, the following explanation is meant only to point out where this process fits in the overall picture and to show how the insurance rates are arrived at in general.

As stated earlier, rating in a very general sense involves an engineering and actuarial evaluation of the physical makeup of individual properties from the standpoint of susceptibility to fire loss within a city, municipality, fire protection district, or county, whereas *grading* involves an engineering evaluation of the physical properties and manpower of the fire defense system from the standpoint of its effectiveness in fire fighting and fire preventions of cities, etc.

As mentioned in the last chapter, by evaluating the actual conditions in a community through use of the grading schedule, the board arrives at a classification. The class designation indicates the rate base to be used on many classes of property including the numerically large dwelling group. The city classification also determines the basic rate which is an integral part in the calculation of individual rates on commercial, industrial and public properties.

Although insurance on dwellings and some other types of risks is written at class rates developed from this classification with further distinction only as to classes of construction and occupancy, properties of the commercial and industrial groups are usually rated individually. A rate applying specifically to each such property is determined according to type of construction, occupancy and use; hazards, and exposures. Since the basic rate is used in the computation of the building rate, fire insurance rates in a community are based directly on the comparative value of the municipal protection facilities, the higher the quality of such protection, the lower will be the rates.

CHAPTER V

ORGANIZATIONS AND AGENCIES INVOLVED IN GRADING AND RATE-MAKING

A RATING ORGANIZATIONS

The principal rating organization in California is the Pacific Fire Rating Bureau. Substantially more than half of the fire insurance written in California is based on ratings promulgated by the Pacific Fire Rating Bureau. Several mutual companies maintain their own rating organizations. The Pacific Fire Rating Bureau is a licensed rating bureau operating in and subject to the laws of the following seven states: Alaska, Arizona, California, Montana, Nevada, Oregon and Utah. Its head office is located in San Francisco, California.

In general, the Pacific Fire Rating Bureau performs two main functions: (1) prepares rate schedules for the 115 different classes of fire insurance, and (2) rates and publishes rating information for individual buildings. The detailed functions and purposes of the Pacific Fire Rating Bureau are set forth in the following excerpt from their constitution:

Article 11 PURPOSES

This association does not contemplate pecuniary gain or profit or the distribution of gains, profits, or dividends to its members, and is formed for the following purposes:

(a) With respect to fire insurance and allied lines, property insurance generally, and (but only to the extent that the governing committee may determine from time to time) such marine, liability, and casualty coverages as are provided by multiple line, multiple peril, or all-risk policies and endorsements on which there is a substantial fire insurance coverage against damage to real or personal property, to determine, adopt, and make available to insurance companies, equitable schedules and rates, not unfairly discriminatory, as well as appropriate rules, forms, regulations, and classifications—to the end that property may be insured upon a basis that is fair and reasonable to the insured, not unfairly discriminatory, and one which will at the same time yield a fair and reasonable return to the insurer;

(b) To accumulate and disseminate underwriting information;

(c) To study and advocate simplification and accuracy of rating methods and rate presentation, to encourage co-operative action by insurance companies in the rate-making process and the full utilization of underwriting experience thereon;

(d) To correlate, compile, and disseminate accurate statistical information concerning losses and loss ratios;

(e) To investigate class or general hazards, and encourage improved methods of building construction and fire control;

(f) To act for insurance companies and insurance rating organizations in filing schedules and rates with public officials where such filings are required by law;

(g) To co-operate and advise with other rating bureaus, advisory organizations, underwriters associations, public officials, and others, to further the equitable adjustment of rates to insurable perils;

(h) To do anything necessary or appropriate for accomplishment of the objectives herein set forth

B. GRADING ORGANIZATIONS

There are two advisory organizations in California which are concerned with the grading of cities, the National Board of Fire Underwriters and the Pacific Fire Rating Bureau. As a general rule, the national board grades cities over 25,000 population and the Pacific Bureau grades cities under 25,000 population. Prior to November 1959 cities under 25,000 population were graded by the Board of Fire Underwriters of the Pacific. However, at that time the fire protection engineering services, performed by the Board of Fire Underwriters of the Pacific, were transferred to the Pacific Fire Rating Bureau and became known as the Engineering Department of the Pacific Fire Rating Bureau. Therefore, in practice, the Pacific Fire Rating Bureau not only grades cities under 25,000 population but also promulgates insurance rates. Basically, however, the grading functions of the National Board and the Pacific Bureau are the same.

The National Board is an association of capital stock insurance companies, organized under the laws of the State of New York as a non-profit organization. Membership is voluntary, any stock insurance company writing fire insurance in the United States may apply for membership. The primary purposes of the organization is outlined in the following excerpt from the National Board of Fire Underwriters' constitution:

PURPOSES

To promote harmony, correct practices, and the principles of sound underwriting, to maintain the immutable law of average, to devise and give effect to measures for the protection of the common interests, and the promotion of such laws and regulations as will secure stability and solidity to capital employed in the business of fire insurance and protect it against unwise and unjust legislation.

To influence and encourage the introduction of improved and safe methods of building construction, the adoption of fire protective measures and State Fire Marshal departments in accordance with the established plan of the board, the efficient organization and equipment of fire departments, with reliable, adequate and high pressure water systems, to establish rules designed to regulate hazards constituting a menace to life and property; to establish standards for the construction of buildings and for the installation of hazardous and protective devices, to establish and maintain stations for testing materials and such devices.

To repress incendiarism and arson by combining in suitable measures for the apprehension, conviction and punishment of criminals guilty of that crime

To gather and record such statistics, establish such classification hazards and losses and make such compilations thereof as may be for the interest of members, beneficial to the public and calculated to reduce the fire waste of the country

To publish and distribute papers, monographs and books designed to promote the purposes of the board

To secure the adoption of uniform and correct policy forms and clauses, the standard form of policy contract and its uniform use in all states, to endeavor to agree upon such rules, regulations and procedure in connection with the adjustment and payment of losses as may be desirable and in the interest of all concerned

To conserve and promote the interests of its members and their policy holders by any and all proper and lawful means

The board shall not have nor exercise jurisdiction or control over rates of premium for insurance or commissions or compensation to be paid to agents and brokers

The primary functions of the National Board of Fire Underwriters are indicated by its committee organization. The major committees are Actuarial; Adjustments, Arson, Theft and Fraud, Engineering, Laws, and Executive. It should be emphasized that the National Board of Fire Underwriters is not a rate-making organization. It has no responsibility for the establishment of fire rates since 1877 and its constitution today expressly prohibits the National Board from establishing insurance rates. The fire grading function centers in the engineering department of the board. The National Board's grading functions, as stated above, are primarily the same as those of the Pacific Bureau. In order to have a complete understanding of the functions of these organizations in the grading field, and the role of their engineering departments, the following summary of the various activities of the engineering department of the National Board of Fire Underwriters which was entered as an exhibit during the committee hearings, is herein included.

Fire prevention work of the National Board of Fire Underwriters centers in the Engineering Department. The work of this department is primarily directed to helping the nation conserve its human and material resources. It serves as a clearing house on fire safety information for municipalities and industries throughout the country. It is conservatively estimated that each year this department handles over 9,000 requests for information from state and federal agencies, 36,000 requests from municipal officials, and 45,000 requests from individuals inside and outside the insurance business.

A major activity of the Engineering Department is the making of municipal surveys which study and report on fire defenses and physical conditions as they relate to the possibility of serious fires and conflagrations. This work started at the turn of the century, spurred largely by the Baltimore conflagration in 1904. Fire de-

partments were called upon from Washington, Philadelphia, and even New York to fight the Baltimore fire and upon arrival found their hoses and engines were worthless because hose couplings did not fit Baltimore hydrants.

The National Board of Fire Underwriters thereupon embarked on a survey of the nation's 55 largest cities. These surveys, made in 1905, showed that conflagration conditions existed in all. The report on the City of San Francisco contained the following language: "San Francisco has violated all underwriting traditions and precedents by not burning up. That it has not done so is largely due to the vigilance of the fire department, which cannot be relied upon indefinitely to stave off the inevitable." Six months after this report was written, the earthquake of April 16, 1906, set San Francisco ablaze, and it suffered the worst disaster ever to strike an American city. Approximately \$200 million was paid by insurance companies for fire losses.

These surveys and the report and gradings issued in connection with them provide very helpful information to the municipal officials concerned. Each report contains a detailed study of the water supply, fire departments, as well as the conflagration hazard within the city. In addition to the factual data and conclusions in the report, a recommended improvement program is included which can be used by the city authorities to correct unsatisfactory conditions and serve as a guide for future municipal planning.

This engineering work alone costs the members of the national board over \$500,000 per year. It originated as an underwriting aid before rating laws were a factor in the fire insurance business. It has developed into a major public service to municipalities. Today virtually every insurer against the peril of fire, including those who are not members of the board, uses the municipal survey and grading service in some fashion to support its rate filings.

The services of our engineers are also made available, upon request, to assist municipalities with special fire protection problems. For the past 10 years, a period of great expansion for many cities, we have been called upon by municipalities and their consulting engineers to give advice in connection with fire stations, pumping stations, treatment plants, storage facilities and new water mains. In addition, our engineers assist in the educational programs conducted by such organizations as the International Association of Fire Chiefs, Fire Department Instructors Conference and regional and state fire department training schools. Other activities of the Engineering Department include (a) publication of a recommended building code, (b) preparation of a fire prevention code, (c) preparation from time to time of standards in connection with the use, handling and storage of hazardous materials and the safe operation of industrial equipment and processes, (d) preparation and dissemination of special interest bulletins (approximately 25,000 copies of each) covering items of interest to fire departments, municipal building inspectors, industrial fire protection people, as well as insurance people, on a wide variety of subjects, (e) preparation and distribution of publications such as those concerning fire-safe hospitals, fire-safe school building,

and (f) research reports and technical reports covering special hazards or materials, processes and new manufacturing developments

The fire prevention work of the Engineering Department is supplemented by the Public Relations Department which prepares and disseminates information designed to safeguard life and conserve property from the perils of fire, windstorm and explosion. It promotes fire prevention campaigns such as Fire Prevention Week, Holiday Fire Safety and Spring Clean Up. It distributes approximately 22 million pieces of literature each year in carrying out its fire prevention work. It has prepared and maintains a film library dealing primarily with the subject of fire prevention.

So much for the traditional functions of the National Board. Many organizations, cities, insurance departments, business concerns and private individuals receive great benefit from these services. Some of the previous witnesses fresh from the casualty field point with pride to the fact that they have reduced fire rates. They fail to mention the tremendous benefits which both they as insurers and the public receive from national board services to which they contribute not one cent by way of support. In fact, as far as rate decreases are concerned, the public is far more indebted to these national board activities which over the years have substantially reduced fire risks and hence fire rates than it is to rate reductions made for short-range competitive advantage.

CHAPTER VI

THE EFFECT OF FIRE GRADING AND RATING ON GOVERNMENTAL ENTITIES IN CALIFORNIA, INCLUDING CITIES, COUNTIES AND FIRE PROTECTION DISTRICTS

A. IN GENERAL

Fire grading and rating affect basically everyone in California, along with governmental entities such as cities and counties, for example, from 20 to 25 percent of a city operating budget is expended for maintaining a fire department. Also other governmental functions, such as building inspection, zoning administration, water service, etc., are strongly associated with grading and rating. Most governmental officials are keenly aware of the fact that the better these practices and facilities, the better the insurance class. The insurance class is a primary factor in determining the basic rate by which rate schedules are factored and applied to arrive at the final premium rate which the insured must pay. The lowest possible premium rate often becomes the immediate objective in a community's effort to decrease its insurance class.

Officials are also keenly aware that many of the improvements required for decreasing their community's insurance class are costly. The question inevitably arises: will amounts to be spent for improved fire protection be offset by the total lower premiums which will be saved resulting from the anticipated improved insurance class, in other words, does better fire protection pay? From information available, it appears, though, that there is no close relationship between the amount spent for improvements and the reduction of insurance class and rates. The rating system was never intended to function according to a precise formula based on that premise.

Even though rates do not decrease in proportion to amounts spent on fire protection, there is some relationship, and it is often the primary consideration in expending funds on improvements, and serves as an inducement to cities. Lower fire insurance rates naturally have broader implications, such as attraction of industrial and other development, as well as the principal benefits of improvements, for example, better water service resulting from higher water pressure of a new storage tank, or sounder structures resulting from better building codes. The financial aspects of grading, and their influence on those governmental functions related to the fire functions, are brought out here to focus attention upon the profound effect which grading has on governmental affairs.

Also, the following statement by Ross Miller, City Manager of Modesto, which was made on behalf of the American Municipal Association before the Subcommittee on Antitrust and Monopoly Legislation of the Judiciary Committee of the United States Senate, on May 29, 1959, further points out the importance of this subject matter:

It is at least thought-provoking, perhaps, that in the field of fire insurance, where we spend billions of dollars of public funds for protection, the standards are set by a private organization, and

the standards not only determine the rates which people in cities pay for fire insurance but, also, directly influence what cities spend for fire protection. There is not another city operation which is so influenced by standards set by a private organization.

In addition, the effect of fire grading and rating on cities is evidenced by the great interest shown by the League of California Cities in this subject. The following excerpt from their testimony before the committee exemplifies this interest:

The League of California Cities is interested in fire grading and rating because these two closely related enterprises performed by the insurance industry profoundly affect the manner in which cities perform a vital city service. Fire protection is, along with police protection, a basic municipal function.

During the 1957-1959 fiscal year, cities in California expended over \$80,000,000 in operating fire departments. This figure is exclusive of expenditures on equipment and facilities, such as fire trucks and fire stations, neither does it include the operation of other municipal functions which contribute substantially to every community's fire defenses, such as installation and maintenance of water mains, building and zoning regulations, and the operation of other emergency services. From 20 to 25 percent of the average city's resources is channeled into providing fire protection.

B. THE RELATIONSHIP OF THE GRADING SURVEY TO THE MUNICIPALITIES AND OTHER GOVERNMENTAL ENTITIES IN ITS OPERATION

In general, as it has been brought out previously, the effect of grading and rating on cities, counties, or a community, is the lowering or raising of the price of insurance on all properties within a city or county or fire protection district, in keeping with, or in relation to, the decrease or increase in deficiency points or class, as determined by the grading.

The question is often asked, "Who can ask for a grading survey?" The following is the answer by representatives of the National Board of Fire Underwriters:

As a matter of fact, in California, an area of rapid growth and expansion, most requests for National Board surveys come from city administrators of those municipalities which have completed extensive changes in their fire protection system and wish a review of it. There are no formal stipulations regarding the initiation of such requests. We would entertain a request from the city manager or chief administrative officer of the municipality. Requests from Pacific Fire Rating Bureau for surveys to update the information they need would be honored. A certain number of surveys are made by the engineering department on its own initiative in fulfillment of their obligation to keep member companies advised of changes in conditions.

Municipality surveys made by the National Board of Underwriters are entirely at the expense of the National Board. There is no direct cost to the municipality. In addition, the grading survey as made by

Pacific Fire Rating Bureau costs the community nothing. The total cost of operating the Bureau is spread among its members and subscribers, and represents only a very small fraction of each fire insurance premium dollar.

As a result of these surveys and inspections of a governmental fire system, a change is reflected in the amount of public protection afforded. When both Mr. Williams of the National Board of Fire Underwriters and Mr. Gilbert of the Pacific Fire Rating Bureau were asked, "What happens when a current survey shows a substantial change in public protection since the previous survey?" they each replied separately as follows:

Williams: Each new grading normally shows some change from the previous grading, either up or down, depending on city growth and changes. As far as the National Board action is concerned, re-grading showing *substantial* changes are treated no differently than the others. In each case, as soon as the work is completed, the report and grading summary is sent to each of our member companies. Copies of the reports go to the city officials concerned. The city manager or chief administrative officer of the municipality is also furnished with a summary of the grading results. Depending upon his degree of interest in the situation, he can then ask for and receive detailed information on those items against which deficiency points have been charged.

Gilbert: If it is found that conditions have changed for the better and rate reductions are in order, they are made promptly and full credit is given for all improvements. If, on the other hand, conditions have changed for the worse and protection no longer measures up to the previously established classification, then the rates are not changed immediately. First, we report in detail to the responsible municipal authority, showing reasons why such a change in classification should be made, and we outline the improvements and perfections needed to maintain the existing rate level. Depending upon the local interest exhibited, this report is followed by correspondence and personal conferences, as indicated by the circumstances. We make every effort to encourage the needed improvements before any rate increases are made.

As stated above, the findings of the inspectors during this grading survey are furnished to the city officials concerned. Further, additional and more detailed information is frequently furnished the city officials, at their request, through correspondence or by personal conferences. However, in his regard, a distinction should be made between the report and the grading. After completing a field survey on a given city, it is the National Board's practice to issue a printed report which is a factual description, or account of conditions found with respect to fire protection, preventive activities, and physical factors relating to the fire hazard. This report also contains conclusions, a general summary, and a list of recommendations, as a guide to municipal authorities in planning better protection. The grading is a separate document. As mentioned above, a summary of the grading, setting forth the total deficiency points, the classification of the municipality, and the allocation

of deficiency points by sections, such as the water supply, fire department, fire alarm system, structural conditions, etc., is furnished automatically to the chief administrative officer. In addition, he may ask for and receive a complete breakdown of the grading, item by item, setting forth the deficiency points assigned under each. Reasons for assignment of deficiency points in each case are generally explained by personal conferences between the engineers of the National Board and the city officials concerned. A so-called improvement letter is generally sent to, or handed to, the city manager, stressing those recommendations in the report which are thought to be of major importance in the fire protection scheme. However, there is some limitation on how much of this information is made available and to whom. This was brought out by the following statement made by Mr. Al W. Gilbert of the Pacific Fire Rating Bureau and the following questions and answers:

Gilbert: While information on municipal protection is most certainly the business of all people of the community, it must be remembered that this includes much detailed data concerning the fire defenses. A file of such reports might be of considerable value to an enemy of this country. Accordingly, in the interest of national defense, we endeavor to restrict their distribution to those directly concerned.

Curtin: This is directed to Mr. Gilbert. In your answer to Question 14 you commented that the file of such a report might be of considerable value to an enemy of this country. For the record, is that the reason why you put on these reports the statement, "Please consider this report, including the map, as confidential information and exercise due care that it becomes available only to those persons who are entitled to this information?"

Gilbert: That is correct.

Curtin: That is what the Secretary of Defense has requested?

Gilbert: That is right.

C. THE ADVISABILITY OF REQUIRING GRADING REPORTS TO BE MADE ACCESSIBLE TO THE GENERAL PUBLIC

As stated in the introductory chapter, a bill was introduced in the 1959 General Session which had as its main purpose the requirement that grading organizations make copies of their grading reports available to the general public (A B 942 of the 1959 General Session). As stated by the author, Assemblyman Lanterman, one of the underlying reasons for the introduction of this bill was the fact that occasionally in certain places in the State there had been some misquotation as to applicable fire insurance rates in certain communities and to classification of certain communities. These instances usually have occurred during a heated annexation election campaign where certain representatives would state that if the voters decided to join a certain city, their fire insurance rates would be lower because they would be joining a community which had a fire defense system with a better classification. It was the author's desire to see if there would be some way to easily check these figures to determine if the statements were true. The presence of this bill, as mentioned earlier, prompted this overall study of the procedures of fire grading and rating. As mentioned by the author at the

committee hearing in Los Angeles, his main concern was not for immediate enactment of legislation on this point but only to introduce a bill for study purposes and thus alert the need for a review of the overall situation.

As a result of this, representatives of the National Board of Fire Underwriters and the Pacific Fire Rating Bureau were asked the following question: Could you kindly comment in detail on the possibility of making the grading reports and the summary grading report available to the public, as was somewhat suggested by A B 942 of the last session? Mr. Gilbert of the Pacific Bureau answered as follows:

The summary grading of some 200 cities have been made public by the League of California Cities. In each case, however, permission was obtained from a responsible city official.

It has long been the policy of both organizations to keep details of the grading confidential between the board and the city. The relationship is comparable to that of an auditor and his client. We do not feel that the law should require us to point out weaknesses in the city's fire defense system since this information has been given to us in confidence.

Mr. W. F. Williams of the National Board of Fire Underwriters, in answering the same question, stated:

As has been explained previously, the National Board of Fire Underwriters makes its findings known to appropriate officials of the particular city concerned. We do not make the report and grading of one city available to officials of another city.

A physician does not broadcast the symptoms or ailments of his patient, and a C. P. A. cannot publicize the audit of a corporation's financial affairs unless instructed to do so. We are in much the same position. Our information is obtained through cooperation of the municipality; tests of water supply systems, fire apparatus and equipment are made for the survey engineers, and municipal records are made freely available. It would be unethical for us to discuss our findings in detail with others. If these findings are to be made public information, this should be done by the municipalities concerned and not by the National Board of Fire Underwriters.

In addition to the above question Mr. Williams was asked the following question: Do you have any suggestions as to what method could be used so that information could not be given out concerning grading reports in such a manner that they could be incorrectly used to influence an incorporation proceeding or an annexation election? His reply was as follows:

As we understand this question, the committee hopes to find some way to assure the accessibility of fire grading reports, yet at the same time impose some reasonable control to safeguard against misuse of such material in annexation or incorporation elections. As we have indicated above, once these reports are submitted by us to the city or districts, it is entirely up to the city

or district as to just what distribution should be made of the information in the reports. Certainly all the people in the district are entitled to know the condition of their fire protection if they are sufficiently interested to ask for it. As to misuse by proponents or opponents in some specific election, we question that human nature can be changed by any statutory enactment. It is apparently a part of the democratic process that some people will always be able to use parts of factual data to further their own interests. Probably the only effective control is well-informed people who can contradict those who are abusing or distorting.

However, in discussions which were held after the committee hearing in Los Angeles between the committee staff and Mr. Williams, it was brought out by Mr. Williams that the National Board, and presumably the Pacific Bureau also, would not have any objections to filing a copy of a grading report of a city with one centralized and interested state agency. Then if anyone wished a copy of the report he could file his request with the state agency. In that manner the burden of supplying huge amounts of copies would not be borne by the grading organization. Two state agencies were suggested as the proper ones for this role, the State Fire Marshal's office or the Insurance Commissioner's office. The committee feels that if this plan is adopted by the proper grading organizations in California, then there would be no need for any legislative enactment which would write such a requirement into law. In addition, the committee believes that such a system would permit interested parties to gain access to these reports without causing an undue burden on all concerned.

CHAPTER VII

CALIFORNIA LAW AND REGULATIONS IN THE FIRE GRADING AND RATING FIELD

A SUMMARY OF THE PRESENT STATE OF THE LAW IN CALIFORNIA

So that the reader can have a complete background of this subject it is necessary that some space be given to lay out the legal framework within which the organizations which grade governmental entities and issue rates operate. The following summary of the law is taken from the report on this subject prepared by the League of California Cities, April, 1959.

REGULATING AGENCIES AND CALIFORNIA LAW

In 1914 the United States Supreme Court found that the rate-making operations of the South-Eastern Underwriters' Association were "commerce among the several states" and were therefore subject to the provisions of the Sherman Anti-Trust Act. In response to this decision, there was a hasty attempt in Congress to exempt insurance from the provisions of the act but the attempts failed. In 1945 the McCarran Act was passed which provided that the insurance industry was to be exempted from federal anti-monopoly acts until January 1, 1948, after which date they "shall be applicable to the business of insurance to the extent that such business is not regulated by state laws." Within that three year period all of the states, including California, adopted legislation regulating, to a greater or less degree, the insurance business.

STATE REGULATION

In 1945, Chapter 27, Statutes of 1945, which appears as Section 1141 of the Insurance Code, was enacted by the State of California, thus exempting the insurance business in California from federal regulation. The State Department of Insurance was charged with the responsibility of administering the State's new insurance laws, including fire insurance. However, the Insurance Commissioner had exercised certain supervisory powers over insurance companies for many years prior to the SEUA case.

The intent of the California law is to assure competition on a sound financial basis, the theory being that the forces of competition are most effective in regulating the industry. To this end, regulation rests on three major points:

- (1) Insurance rates shall not be excessive, inadequate nor unfairly discriminatory.
- (2) Advisory and rating services shall be available to all admitted insurers. (An admitted insurer is one who makes application for transacting specific classes of insurance, com-

plies with all of the requirements of the law and procures a Certificate of Authority from the Insurance Commissioner)

- (d) Co-operation between insurers in ratemaking matters is authorized, but agreement among insurers to adhere to certain rates is prohibited

The standards applicable to rates in determining excessiveness, inadequacy and unfair discrimination are

"No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided and (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable

"No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly "

The services of advisory and rating organizations are required to be available to any admitted insurer, at a reasonable fee. The purpose of this provision is apparently to prevent the possibility of rate fixing by excluding some insurers from access to rating data.

Members or subscribers of rating or advisory organizations may use the rates and systems of grading and rating organizations but, except in matters relating to co-surety bonds or in agreements for apportionment of casualty insurance, are prohibited from agreeing with each other to adhere to rates. However, joint underwriting and joint reinsurers are considered single insurers and are therefore immune to the prohibition of agreement on rates.

Advisory, rating, joint underwriting and joint reinsurance organizations are required to provide evidence of compliance with the Insurance Commissioner, and the evidence must be approved by the Insurance Commissioner in order to obtain and retain a license. The Insurance Commissioner is authorized to examine any insurer, advisory or rating organization, joint underwriter or joint reinsurer to see that each complies with the requirements and standards set forth in the statutes. He may revoke a license or may invoke a fine for failure to comply.

Companies and rating bureaus are not required to obtain approval of their rates from the Insurance Commissioner. They are not even required to file their rates.

Any person aggrieved by any rate charged, rating plan, rating system or underwriting rule (this language appears to include a city grading), may appeal through procedure provided for in Article 7, Sections 1858 et seq. of the Insurance Code.

B COMPARISON WITH THE LAW IN OTHER STATES

As stated above, California does not require a filing of insurance rates and prior approval by the Insurance Commissioner, and it is the only state which does not have such a requirement. However, the reason behind this was explained by Mr. Gilbert during the course of the

Los Angeles hearing in answer to the following dual question: Is it not true that California is practically the only state not requiring a filing of insurance rates and prior approval by the Insurance Commissioner? If this is the case, are insurance companies and/or rating bureaus in other states required to file, as part of their supporting information, details of the grading of fire protection?

Gilbert The first part of the question should be answered in the affirmative. The second part should be answered in the negative, insofar as the Pacific Fire Rating Bureau is concerned. Supporting information, as required in states with prior approval procedures, is customarily in the form of statistical exhibits. In other words, state regulatory authorities are more interested in the statistical support of the overall pricing of insurance and the internal relationship with pricing, as related to the classification system, than in the methods employed in arriving at the price, so long as they are satisfied themselves that reasonable and experienced judgments are used in the development of the methods. This applies to the grading system the same as it does to our tariffs and schedules, all of which are essentially engineering appraisals of fire prevention methods, fire fighting methods, and methods of relating the elements or factors causing fire damage to property. During the course of an examination of Pacific Fire Rating Bureau by the California Insurance Department, which the law requires be made every five years, all methods of rating are checked for inconsistencies and unfair discriminatory features. These examinations require anywhere from 12 to 18 months, and serve in part as a determination of the soundness of the bureau's judgments on schedules and rating techniques, in light of the standards for rate making as provided by law.

C. COMMENTS ON THE EXISTING PROVISIONS OF THE LAW AND POSSIBLE CHANGES SUGGESTED BY THE LEAGUE OF CALIFORNIA CITIES

During the hearing in Los Angeles, the League of California Cities through their representative, Mr. Jay Michael, referred to the committee for consideration four possible areas of inquiry. Two of the areas dealt with the Standard Grading Schedule and these were discussed previously in Chapter III. However, the other two areas dealt with possible changes in the existing law, as is pointed out by the following excerpt from the league's initial presentation to the committee:

2 The appeal procedure provided under the Insurance Code (Sections 1858 and following) has never been used by any California city, nor is it likely to be used, because the appeal procedure appears to be exceedingly difficult. It appears as though a city that is not satisfied with a *grading* must prove that the *rates* being charged are either excessive, inadequate, or discriminatory as defined in the statutes. Further, "excessive" seems to imply that a reasonable degree of competition does not exist which, in turn, requires proof beyond a mere adoption of bureau rates by insurance companies. Cities have to comply with recommendations of the National Board of Fire Underwriters or the city's national board class which is a weighty factor in determining rates will not be

reduced. It seems reasonable that recourse to appeal any arbitrary decisions of an agency of the insurance industry should be made somewhat easier.

3. Nearly 100 percent of the insurance industry benefits from the use of National Board gradings in establishing rates but only 70 percent of the insurance industry in California supports the National Board of Fire Underwriters either through membership or subscription. A grading system of some kind is a necessary prerequisite to incorporating the factor of fire defenses into fire insurance rates. If the quality and quantity of fire defenses were not reflected in insurance rates, not only would rates be inequitable but the incentive for providing and improving fire defenses would be destroyed. The committee may wish to consider taking legislative steps which would assure sound support of a grading system, whether it be the present system or another one. (In Texas, we understand the grading is done by a State agency.)

CHAPTER VIII

SPECIFIC CRITICISMS OF THE FIRE GRADING AND RATING SYSTEM FILED WITH THE COMMITTEE AND THE CORRESPONDING REPLIES BY THE NATIONAL BOARD OF FIRE UNDERWRITERS AND THE PACIFIC FIRE RATING BUREAU

In order to round out the committee's study on this subject, and especially for the purpose of having a complete transcript, the committee staff in advance of the Los Angeles hearing listed approximately 13 criticisms of the fire grading and rating procedures which had been previously made by representatives of the American Municipal Association¹ and the League of California Cities² and sent them to the representatives of the National Board of Fire Underwriters and the Pacific Fire Rating Bureau so that they could prepare detailed comments to be contained in their presentations before the committee. (A complete list of these criticisms and the insurance industry's replies are contained in the transcript of the hearing.)

In Chapter III some of the criticisms of the Standard Grading Schedule and the insurance industry's replies to them were listed, and again in Chapter VII some of the criticisms of the present provisions of California law on this subject were mentioned. However, in order that the reader may have a full picture of this subject, some of the more pertinent criticisms and the insurance industry's reply to them are listed here in excerpt form from the transcript.

Bradley: Could you kindly comment on the following statement of Arthur Saltzstein:

In many instances, especially as to certain classes of property, an improved rating does not result in a saving of fire insurance premiums, though it is generally argued that the main reason for a good rating is to keep premium costs down. In other instances, the municipal expenditures required to secure an improved rating are not offset by the savings to those purchasing insurance. In other cases, especially in larger cities, while there may be improved protection in a limited area, the changes are not justified on a community-wide basis.

Williams: Our comment on that is as follows:

It is believed in this paragraph the word "rating" is meant to be "grading." Organized protection is measured by the grading

¹ Statement of Arthur Saltzstein, Administrative Secretary to Mayor Frank P. Zeidler, Milwaukee, Wisconsin, on behalf of the American Municipal Association, before the Subcommittee on Anti-Trust and Monopoly Legislation, Judiciary Committee of the United States Senate on May 29, 1954. (Statement on file in Assembly Committee on Municipal and County Government's office in Sacramento.)

² League of California Cities' report on Fire Insurance Grading and Rating in California, April 1959.

process, and the credit given for it is only one factor in the establishment of rates of premium. There are cases where the over-all protection of a community shows improvement while at the same time statewide loss experience with certain classes of construction or occupancy, which are primary considerations, may dictate an increase in premium cost as to that occupancy. For example, you might have a situation where a city is regraded, and gets an improvement in grading, and yet you take the class of perhaps theatres, maybe there have been several bad theatre fires. The statewide experience for theatres may show that the loss ratio may be 120 percent for that, and in that case there would necessarily be a rate increase which might more than offset the reduction the community is getting in its grading.

There is not necessarily and under all circumstances a constant relationship between the cost of fire protection and the deficiency points removed in the grading by installation of that protection. One simple example may suffice to make this clear. In treating with the reliability of a water system, the Grading Schedule standards specify such design of engineering features that no single break in a supply line or other accident will prevent the delivery of sufficient water to the location of a severe fire. Obviously, this reliability can be achieved in various ways, through duplication of supply conduits, by providing elevated storage, or by development of emergency sources of supply. The cost may vary within extreme ranges. Cost of duplicating a supply line will vary in cost according to its length, providing elevated storage will vary in cost according to the topography of the city. What may be economically justified for one city may not necessarily be so for another.

In September of 1958 in a panel discussion at a meeting of fire chiefs in Los Angeles, Manager Carl Thornton of Santa Ana made these statements:

- 1 A conservative valid and reliable estimate of reduction in charges for fire insurance resulting from National Board classification improvement *can* be made,
- 2 Normally a city can expect such reductions in insurance costs of operational and capital improvement required to achieve such schedule improvements at least up to a class 2 rating. Computations derived from the 1952 data and adjusted to increased values in 1954, show an annual savings of \$244,000 for that latter year.
- 3 Any city manager who does not take advantage of this facility offered by the procedures and staff of the NBFU and the local rating bureaus are sacrificing a most important administrative and public relations tool.
- 4 The City of Santa Ana, to achieve both the tangible and intangible benefits of a highly rated city *must* have a class 2 National Board rating. We can prove its justification and we intend to have it. Board may be on notice that we will require a survey and demand the higher rating by late 1960 or early 1961.

Bradley Could you kindly comment on the following statement by Mr Saltzstein

In fairness to the board, it is developing a more realistic attitude toward the many new and cost-saving techniques being developed by municipal officials. It has been extremely slow to give them due consideration in the past. Cities fighting overall costs need new ways to save, and where these are equally effective, they deserve immediate and due recognition. Recent examples, some still not fully accepted by the board, include adequate credit for reciprocal service or mutual aid arrangements, telephone alarm systems, integration of public safety forces, etc. Many of these are not complete substitutes for traditional methods and many need more trial, however, I believe strongly that the board tends to underrate them and to frown upon them during experimentation rather than encouraging such developments. This is the effect when applying the schedule. Much has been done recently to update the grading schedule, but some ironic humor can be found in the fact that the 1942 grading schedule (p 36) used until 1956, still contained standards for hand-drawn and horse-drawn apparatus, though I was unable to discover anywhere where such equipment was used substantially before the date of its publication.

Williams Our comment especially as it relates to the statement that the National Board of Fire Underwriters is slow to give consideration to new techniques and facilities is as follows

Innovations and new developments in the fire protection field occur regularly. We are alert to these. We welcome them and make frequent adjustments in recognition of proven changes. The extent to which experimental techniques should be recognized and the dependence that should be placed on new devices is, however, a matter of informed judgment in this field as in any other.

Here again some criticism evidently arises from lack of knowledge. To take just one item in the paragraph under discussion.

It is implied that the National Board declines to recognize or to give full credit for the telephone-type municipal fire alarm system as opposed to the more common telegraph-type. Since this criticism has been raised, we feel compelled to set the record straight before the committee.

The attitude of the National Board of Fire Underwriters toward telephone-type alarm systems is clearly set forth in two widely distributed bulletins entitled Special Interest Bulletins Nos 301 and 302, published in 1955, four years before the comments quoted above were made. Copies of these bulletins are attached as Exhibit No 3 (Placed in committee file). Pertinent excerpts are quoted verbatim as follows.

"The use of telephones for fire alarm purposes may be put into three categories: (1) use of the commercial telephone system with its unusual number of telephones in residences and business establishments, (2) use of the commercial telephone system supplemented by telephones, usually of the coin-operated type, in-

stalled at street intersections and available to the public and (3) installation of a private telephone system leased from the telephone company with telephones installed at street intersections, available to the public and directly connected to a central fire alarm headquarters

"The third category, provided it has characteristics in accordance with the intent of the provisions of N B F U No 73, 'Standards for Municipal Fire Alarm Systems,' can be considered as a municipal fire alarm system on the same basis as a telegraph-type system

"The National Board of Fire Underwriters recommends the installation of a municipal fire alarm system in all cities and towns, no other means of reporting alarms is as rapid and dependable. However, the municipal officials must make the decision whether to install a system and what type of system to install. Gradings of the fire protection facilities of a municipality are made on the basis of the adequacy, reliability and extent of the system as compared with the Standards for Municipal Fire Alarm Systems, N B F U No 73, without regard for the type of system installed. The cost of installation of fire alarm systems of either the telegraph-type or telephone-type is not a subject with which the National Board of Fire Underwriters may properly concern itself. However, it is a very important facet of the problem for municipal officials. It is suggested that municipalities carefully consider the complete cost of both types of system providing identical protection in accordance with N B F U Standard No 73."

Bradley: Could you kindly comment on the following statement by Mr Saltzstein:

Gradings are infrequent—sometimes as much as 10 years apart. Improvements between gradings are not recognized and deficiencies accumulating are not penalized. Nevertheless, the gradings continue to be used for rating purposes and are of declining significance, especially on a comparative basis as between cities in ratemaking. Unless a city makes substantial improvement, it is better off not to request a reinspection. If it makes such an improvement, the delay in reinspection often makes it of little value.

Williams: Our comments on this are:

Gradings are not out of date to the extent that they are inaccurate. The fact that an official grading may be some years old does not necessarily mean that it is incorrect by any significant margin. Engineers of the National Board are in periodic touch with municipalities in California. We know which ones are growing, expanding, and improving their fire protection and which are static. The work schedule is laid out months in advance to anticipate the need for surveys and regradings of those cities in which major changes and improvements are taking place.

Bradley Could you kindly comment on the following criticism of the grading process which is mentioned in the League of California Cities' report "Actual performance of cities is slighted in the grading process. A city's fire loss experience may be exceptionally good but never reflected in the grade."

Gilbert Our answer to that is as follows

The schedule is designed to measure the relative position of a city with reference to the fire defenses and physical conditions. The actual loss figures do not necessarily indicate the excellence of the fire defense system. The City of Los Angeles experienced a condition a few years ago which illustrates the point. On December 21 the chief stated that the city showed the lowest per capita loss for the year since records had been kept. On December 23, two days later, it had the worst. This was due to one serious fire, yet, the fire defenses of Los Angeles had really experienced no change between December 21 and December 23.

A good fire record may have just as little bearing. There is a saying in the fire service "Never brag about your good fire record. It only means that you are closer to the next bad one." On the other hand, an engineer does consider past fires, but instead of charging up the figures, it is his job to see *why* the experience has been bad or good and account for it in grading such items as drills and training, discipline, fire methods, etc.

CHAPTER IX

OTHER STUDIES IN THIS FIELD AND THEIR POSSIBLE IMPACT ON THE FIRE GRADING AND RATING PROCESS IN THE FUTURE

During the period of 1959-1960 other groups and committees, outside of this committee have been studying this problem. Many of them have come up with some definite recommendations and as a result there possibly might be some changes in the overall grading and rating processes. In addition to the League of California Cities, other organizations such as the Colorado Municipal League, the Association of Washington Cities, the League of Arizona Cities, the Georgia Municipal Association and the League of Wisconsin Municipalities have been reviewing this matter.

The American Municipal Association has been concerned with the subject for some years. Their concern resulted in a study in 1949 of the mechanics of fire insurance ratings, and the establishment in 1951 of the first AMA Committee on Fire Insurance Rating and Grading. The scope of their study and the reasons behind it are set forth in the following resolution adopted at their 1959 annual meeting:

In order to protect life and property, municipalities are responsible to their citizens for furnishing the best possible fire protection service from the local funds provided for this purpose. Because of reliance by state regulatory officials upon the grading of public fire protection facilities by the National Board of Fire Underwriters and related regional and state agencies and the generally prevailing methods of determining fire insurance rates, such evaluations are a major factor in determining the expenditures of large sums of public and private moneys. The American Municipal Association recognizes the continuing concern of municipal officials over the ever increasing expenditures for providing adequate fire protection and is concerned with the substantial expenditures by their citizens for fire insurance. To further this interest, this association will continue its inquiry into fire insurance grading and rating procedures including the following:

- 1 Revision of the fire grading schedule
- 2 Application of the grading schedule to municipalities
- 3 Factors affecting fire insurance rates
- 4 Better utilization of manpower for fire protection.
- 5 The development and acceptance of new and improved equipment and techniques of fire prevention, protection, and extinguishment.

The American Municipal Association expresses its appreciation to the United States Senate Antitrust and Monopoly Subcommittee which has undertaken a study of the fire insurance business as

a part of a broad study of the operation of the insurance industry and pledges its full co-operation to the subcommittee and its staff.

The American Municipal Association expresses its appreciation to the National Board of Fire Underwriters for instituting a program to rewrite and modernize their Standard Grading Schedule and to consider recommendations made by municipalities. The American Municipal Association urges the National Board of Fire Underwriters and related agencies to work with municipalities in developing a procedure under which a preliminary report will be made available specifically pointing out areas of deficiency, and permitting and encouraging municipalities to make improvements before the grading process is completed.

To best serve the public interest and provide to municipal officials a practical method for measuring fire protection facilities and for self-evaluation and to enable them to effectively review present gradings and other factors as they affect local fire insurance rates, the American Municipal Association supports an independent study directed toward the development of a fire protection grading system designed to reflect current needs and conditions.

With reference to the American Municipal Association study mentioned in the resolution, it is to be noted that the main office of the National Board of Fire Underwriters in New York has appointed a special board representative to work with the American Municipal Association on these matters. This committee will be watching with great interest the activities of these various groups and will take note of any progress or change in this field. The committee sincerely hopes that the various efforts, especially on behalf of the AMA now being made, will stimulate more interest in this all-important field so that as a result there can be greater co-operation between interested local governmental officials and members of the insurance industry.

ACKNOWLEDGMENTS

In conclusion, the committee wishes to express its appreciation to the officials of the National Board of Fire Underwriters and the Pacific Fire Rating Bureau, especially Mr. W. F. Williams and Mr. Al W. Gilbert, for their detailed presentations before the committee. Their assistance in explaining the basic history, functions and procedures of fire grading and rating was invaluable. The committee further wishes to thank the representatives of the League of California Cities, in particular, Mr. Jay Michael, for their interest and aid in explaining the cities' interest and viewpoint.

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STATE OF CALIFORNIA

FINAL REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON MUNICIPAL
AND COUNTY GOVERNMENT

House Resolution No. 326.16

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LETTER OF TRANSMITTAL

HONORABLE RALPH M. BROWN
Speaker of the Assembly
State Capitol, Sacramento 14, California

DEAR MR. SPEAKER: The Assembly Committee on Municipal and County Government submits herewith its report on special district problems, one of the studies conducted by the committee during the 1959-61 interim, in accordance with House Resolution No. 32616 of the 1959 Regular Session.

This final report contains the findings, conclusions, and recommendations of the committee on this subject.

Respectfully submitted,

CLARK L. BRADLEY, Chairman

BERT DE LOTTO, Vice Chairman

DON A. ALLEN, SR.

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SUMMARY OF FINDINGS

The committee's study of special districts centered around the four subjects listed below.

I CONSOLIDATION OF CERTAIN SPECIAL DISTRICT ACTS

1. The California Codes still contain many special district laws which relate to the same function
2. Some of these district laws have never been used at all and others have been used only once or twice
3. In general, witnesses at the hearings agreed that those district laws which have been on the books for a number of years and have never been used should be repealed.
4. In those fields such as harbors, etc., where there are many special district laws all pertaining to the same function there should be some consolidation of district acts so that only one or two district acts pertaining to a function shall remain

II. CONSOLIDATED FIRE DISTRICT BILL

1. The law presently authorizes a fire protection district to form under the provisions of four fire protection district acts
2. The committee's findings and recommendations on this subject made during the 1957-59 interim are still sound
3. The witnesses agreed that there is still a need in California for a consolidated fire district

III. LACK OF PUBLIC KNOWLEDGE IN THE SPECIAL DISTRICT FIELD

1. There exists in California a widespread lack of public knowledge concerning the existence and operations of many single purpose special districts
2. This is evidenced by the poor turnout at district elections. Voting records indicate that a 10 percent turnout is about average
3. In addition, the committee found that many residents cannot even name the districts in the area where they live

IV WITHDRAWAL OF TERRITORY FROM A SPECIAL DISTRICT AND DISTRIBUTION OF ASSETS

A. Fire District Law

1. The committee's study revealed that the present formula for distribution of assets in the fire district field, which was enacted into law during the 1959 General Session, is an improvement over the rigid proportionate basis formula which was contained in the old law
2. Most witnesses agreed that this new fire district formula was an approach to the problem even though it might not be the best solution at this time.

B. Recreation and Park District Law (5700 Series of the Public Resources Code)

1. At present there is much misunderstanding among those specialists in the district field as to the exact procedures for withdrawal of territory from a recreation and park district. This is due to the great amount of ambiguity in the present law.
2. There still exist major differences of opinion which have not been resolved between the representatives of city government and district government as to the procedures for withdrawal. The district representatives do not wish to place the power of initiating such withdrawal in the hands of the city council, in addition, they do not wish to have any withdrawal take effect unless there is a vote held in the entire district and not just in the area involved, as the city representatives suggest.
3. This desire to withdraw from a district usually arises when a district resident is also a resident of a city which has an operating recreation and park program and, therefore, is being taxed twice for recreation and park services.
4. At present there is no practical way city residents who also live within a recreation and park district can withdraw from the district without the consent of the governing board of the district.
5. The problem of how the assets of the district are to be distributed after a withdrawal has been effected is only a secondary one. Most witnesses agreed that if there was a withdrawal, this matter could be worked out by arbitration between the city and the district. However, the city representatives would like to have a provision in the law stating that there shall be a distribution. At present the district may, if it so desires, keep all the assets and property even after a withdrawal.

RECOMMENDATIONS

On the basis of evidence presented to the committee by witnesses in the course of the hearings, as well as research work independently conducted by the committee staff, the following recommendations are hereby submitted

I CONSOLIDATION OF CERTAIN SPECIAL DISTRICT ACTS

- 1 Joint Harbor Improvement District Act (H & N 5700-5784) and the Recreational Harbor District Act (H & N 6400-6694) should be repealed since they have never been used
- 2 Permit the Small Craft Harbor District Act (Chapter 1598, 1959 General Session) to stand since it was just recently enacted and it is now beginning to be used statewide
- 3 Allow the Harbor Districts Act (H & N 6000-6111), Harbor Improvement Districts Act (H & N 5800-5915), Port Districts Act (H & N 6200-6372), and the River Port District Act (H & N. 6800-6963) to stand for the present despite the fact that all of them basically have the same function. The reason behind this decision is that the committee did not feel that these acts were the type of district acts which would be used to any great extent throughout the State by their very nature, and also because the effort and time necessary to work out a consolidation might not be justified in view of this
- 4 Combine the Parking District Act (S & H 35100-35707) and the Vehicle Parking Districts Act (S & H 31500-31866) into one act with the idea to consolidate the provisions of these two acts which are substantially the same and put into the alternative those that are substantially different
- 5 Leave the Parking Authorities, Act of 1949 (S. & H. 32500-33552) alone since many of the districts formed under that act contend that they are not, as such, special districts but rather a part of a city function
- 6 Insert dissolution clauses into the Parking Authorities Act of 1949 and also into the new consolidated Parking District Act
- 7 Insert dissolution clause into the Public Cemetery District Act (H. & N 8125-8133)
- 8 Continue the policy of the committee as established in 1957 interim and do not consolidate the Sanitary District Act with the County Sanitation District Act
- 9 Amend the Garbage and Refuse Disposal District Act so that no more districts could be formed under the act but at the same time permit those districts now in existence to continue operating. The main reason for this is that the committee feels that the Garbage Disposal District Act is capable of doing all that this act does if some minor amendments are made
- 10 Amend the Garbage Disposal District Act to provide that if an area decides to operate only a disposal site, then it could issue bonds as now permitted under the Garbage and Refuse Disposal Act
- 11 In view of the testimony of the witnesses from Los Angeles County concerning the problem of the county sanitation districts going into the active collection business, the committee at this time de-

cided not to consolidate either of the Garbage Disposal Districts Act and the Garbage and Refuse Disposal Districts Act into the County Sanitation Districts Act or the Sanitary Districts Act.

II. CONSOLIDATED FIRE DISTRICT BILL

1. Reintroduction as a committee bill the Consolidated Fire District Bill, as part of the committee's program to consolidate special district acts dealing with the same function

III. LACK OF PUBLIC KNOWLEDGE IN THE SPECIAL DISTRICT FIELD

1. Introduction of legislation which would require that all special districts file with the county auditor in the county in which they are located a copy of their budget or, if they do not have one, a statement to that effect.
2. Introduction of legislation which would require all county tax collectors to indicate on the annual tax bill which is sent out to the taxpayers the amount attributable to special district operations. This could be indicated by stating the lump sum amount of taxes charged by districts or by indicating the amount in percentages.

IV. WITHDRAWAL OF TERRITORY FROM A SPECIAL DISTRICT AND DISTRIBUTION OF ASSETS

1. During the next session some clarification of the law concerning the procedures for withdrawal of territory from a recreation and park district should be undertaken.
2. As stated in the report, outside of the above statement, the committee does not plan to make any specific recommendations in view of the great differences of opinion between the representatives of city and district government, and especially since both groups will be introducing legislation in this field at the 1961 General Session. In this manner the committee, having the benefit of this interim study and report, could judge without bias each proposal as it comes up. The committee believes, however, that further study should be given to the factors listed in the report concerning what items should be considered in proposing legislation in this field.

V. IN GENERAL

1. It would seem that additional study should be given by the committee to the extensive problem of the independent special district. Recommendations as presented by numerous witnesses to hold the line on further formation of such districts until future study reveals a solution, as well as recommendations to establish county committees for the purpose of studying districts to determine the need for consolidation, feasibility of formation, etc., should be given serious consideration by the Legislature.
2. In addition, the committee feels that tailormade legislation in the special district field should be avoided wherever possible since it has been shown that such legislation fails to adequately solve the overall problems of the expanding urban growth of California.
3. Further study should be given to the problem of consolidating special district acts in other fields

CHAPTER 1

INTRODUCTION

In conjunction with the rising cost of government, the problem of special purpose districts has received a great deal of attention in California. The number of special districts has increased at a phenomenal rate, for the most part to take care of the municipal type service needs of the rapidly growing unincorporated fringe areas. The extensive scope of this form of local government can be readily seen by a comparison of their number with that of the other two basic units of government in the State. There are 58 counties, approximately 360 cities, and at last count, 3038 special districts,¹ not including school districts, districts within municipalities, and some reclamation districts.

A good example of the expanded use of the special district device can be found in Sacramento County where in 1920 there were 35 districts, in 1950, 101, and as of 1958, 148. In area, these districts varied from a few acres to that of the entire county.

The large number of districts is partly accounted for by their authorization to perform only those functions that are set forth in the enabling act under which they are established, and for the most part, districts are limited to a single function. Today districts carry on 66 different classes of activity. This is in direct contrast to the numerous authorizations available to city and county governments. Another factor contributing to the large number of districts is that many of them are quite small in size.

An important facet of the district problem is that nearly 1,700 of the 3038 special districts in the State are governed by an elected governing board and therefore enjoy a high degree of local autonomy. This local autonomy does not always provide the grassroots control that it is presumed to, since district government tends to be confusing to the citizen. The citizen is often at a loss to know where to go to register a complaint, which district is providing what service, and what the tax dollar is being spent for. In order to be a conscientious citizen, residents of some areas would have to keep up with the activities of as many as 10 or 12 governments. Pool district voting records indicate that the average citizen has little interest in the day-to-day activities of districts, probably due to the large number and their small-scale operation.

It must be noted that special districts are simple to create and can provide a needed service to areas that in most cases could not otherwise be provided for. Many special districts seem to be excellently administered, have a low tax rate, and provide efficient service to not only unincorporated areas but to incorporated areas as well, in fact, a number of districts operate successfully on a regionwide basis.

¹ *Annual Report of Financial Transactions Concerning Special Districts of California, Fiscal Year 1958-59*, Alan C. Cranston, State Controller.

However, it is widely recognized that far too many districts have a poor tax base, a limited scope of operation, are overlapping, etc., causing an undue tax burden on the recipients of their services, and there seems to be no satisfactory method to cope with the problem in the existing law.

In addition to the multiplicity of special districts, there is the problem of multiplicity of special district laws. Districts may be organized under 147 current authorizations. Many of these laws pertain to the same function: for example, there are seven harbor district acts; three parking district acts; prior to 1957, four park and recreation district laws; and prior to 1959, nine single-purpose sewage disposal district laws. In addition, there are numerous multipurpose and some metropolitan district acts which are authorized to perform the above functions.

The Municipal and County Government Committee started its study of district laws by concentrating on the possible consolidation of those pertaining to a particular function in the interim between the 1955 and the 1957 Regular Sessions of the Legislature, at which time the four park and recreation district laws were studied. This study culminated in the introduction of committee sponsored legislation which was successful at the 1957 Session. There is now a single consolidated park, recreation, and parkway act to take the place of the four previous acts, and a metropolitan-type park district act which study indicated should not be included in the consolidating bill. Also, during the 1957-59 interim, the committee, continuing its district work, studied the nine single-purpose sewage disposal district laws, and also the four fire protection district laws. The Committee issued a final report entitled, *Special Districts in the State of California. Problems in General and the Consolidation of Sewer and Fire District Acts*. Also, legislation recommended in this report was introduced in the 1959 Session.

During this interim study, the committee concentrated its efforts on the following four subjects.

- a Consolidation of certain special district acts that pertain to the functions of operating cemeteries, vehicle parking, harbors, and the disposition and control of garbage.
- b The problem of distribution of assets of a special district when a part or all of the district is included within the boundaries of a city as a result of an annexation or incorporation.
- c An attempt to make the public more aware of the existence and operations of special districts by proposing as possible requirements the following:
 - 1 All special districts must file a copy of their budget with the county auditor.
 - 2 The annual county tax bill must indicate the exact amount to be collected for special district purposes.
- d Reintroduction of the Consolidated Fire District Act.

In October, 1959, the committee held a hearing in San Francisco on the first subject, and transcripts were made available to the public. The subject matter of distribution of assets was the main item of dis-

cussion at a hearing in Los Angeles in December, 1959, and again in the same city in October of 1960. The Consolidated Fire District Act was also discussed at that time. Transcripts of those hearings were also made available to the public. The third subject was discussed in June of 1960 and transcripts of that hearing were made available to the public.

This report will include the recommendations made at the committee hearings by the witnesses who testified, and also the findings and recommendations of the committee on each of the above four subjects.

CHAPTER 2

CONSOLIDATION OF CERTAIN SPECIAL DISTRICT ACTS

PART I

HARBOR DISTRICT ACTS

According to the 1958 Annual Report on Special Districts published by the State Controller, there are 12 harbor districts in the State. However, there are on the statute books seven enabling acts whereby harbor districts may be set up:

- 1 Harbor Districts—H & N 6000-6111
- 2 Harbor Improvement Districts—H & N 5800-5915.
- 3 Joint Harbor Improvement Districts—H & N. 5700-5784
- 4 Port Districts—H & N 6200-6372.
- 5 Recreational Harbor Districts—H & N 6400-6694.
- 6 River Port Districts—H. & N 6800-6963
7. Small Craft Harbor District Law enacted in 1959, Chapter 1958.

Research showed that of the 12 districts formed in the State, six were formed under the Harbor Districts Act, one under the Harbor Improvement Districts Act, four under the Port Districts Act and one under the River Port Districts Act. Three of the acts have never been used.

Mr George W. Wakefield, Chief Assistant County Counsel, Los Angeles County, in his written testimony submitted at the hearing, exemplified the consensus of opinion when he stated:

It would be my recommendation that those acts under which no districts have been formed be repealed, rather than consolidated with other acts. After the lapse of time, our experience has been that if districts are not formed under a special statute, it indicates that there are procedural difficulties in the statute which make the formation of districts pursuant to its provisions unsatisfactory.

Following Mr Wakefield's recommendation, the committee recommended that legislation be proposed to repeal the Joint Harbor Improvement District Act and the Recreational Harbor Districts Acts, the two acts under which no harbor district has ever been formed.

However, this policy was not meant to be applied to the new Small Craft Harbor District Act enacted in 1959. The thought of the committee on this was to recommend that it be allowed to stand separate from all other acts, at least for the time being, since it is a new act expressly designed to fit the present interest in small craft harbors. At the present time proceedings are being undertaken for the formation of a district under this law in the Oceanside area and no doubt it will be used in other areas soon.

In regard to the four harbor district acts under which districts have been formed, the committee decided not to make any recommendations for consolidation or elimination at this time, despite the fact that all of them have basically the same function and have similar procedures. The main reason behind this decision was that the committee did not feel that these acts were the type of districts acts which would be used to any great extent throughout the State by their very nature, and also because the effort and time necessary to work out a consolidation might not be justified in view of this. Also, the committee recommended that in the future some consideration should be given to the possible repeal of the Harbor Improvement District Act, especially since only one district has ever used this act.

Since research showed that none of these district acts contained a dissolution clause, it was decided in accordance with the committee's general policy on this matter to amend each act to insert such a clause.

PART II

PARKING DISTRICT ACTS

According to the Analysis of California District Laws, prepared by the Legislative Counsel's office, there are three main enabling acts under which an area can provide for motor vehicle parking. They are:

1. Parking Authorities—act of 1949, S & H 32500-33552
2. Parking Districts—S & H 35100-35705
3. Vehicle Parking Districts—S & H 31500-31866

The functions of each are basically the same, that is, to construct and provide for parking facilities, with the one exception that the Parking Authorities Act is limited to providing for such only within a city.

However, the committee found it difficult to determine just how many parking districts have been formed in the State and under which act. The 1958 Annual Report on Special Districts published by the State Controller's office, which usually lists all of the special districts in the State and the act under which they are formed, listed only two parking districts and they were formed under the Vehicle Parking Districts Act. At the hearing on this matter the reason for this was explained in the following written presentation made by Martin Anderson, Chief of the Division of County Budget Reports, State Controller's office:

Parking districts formed within cities have not been included within our report of Financial Transactions Concerning Special Districts. This is true of all districts on the city level. The Vehicle Parking Districts were included in the report but this was because they were entirely in unincorporated areas and governed by the board of supervisors of the county in which located. All districts on the county level are included. The reporting program calls for districts on the city level to be included but it is not believed that the location of these districts will pose any special problems. The major problem is one of available staff time to accomplish it.

Also, this lack of knowledge as to just how many parking districts exist in the State was further explained by the following testimony given by Miss Peggy McElligott, attorney, firm of Kirkbride, Wilson, Harzfeld and Wallace of San Mateo

I would just like to draw the committee's attention to the fact that in addition to the several parking district acts which you have on the books, there are any number of cities which have formed parking districts under the assessment laws, so that you also have existing other types of parking districts which you have some difficulty getting reports on

In regard to the question whether these three acts which have similar functions should be consolidated into one, or maybe two acts, or whether there should be some elimination, the committee from the testimony at the hearing, and mainly from continued study of the various provisions of the three acts, decided to leave the Parking Authorities Act of 1949 alone and, instead, combine the Parking Districts Act and the Vehicle Parking Districts Act into one act, with the idea to consolidate the provisions of these two acts, which are substantially the same, and put into the alternative those which are substantially different. The reason behind the decision to leave the Parking Authorities Act of 1949 alone was that many of the districts formed under that act contend that they are not, as such special districts but rather a part of a city function. This contention bears a great deal of weight since a close study of the act reveals that the area covered should include an entire city unless the city also assumes powers of authority over any portion of the city, and that the authority comes into existence in each city by statutory declaration, and there is no provision in the act for protests to its formation

However, the other two acts do definitely set up a special district to provide for vehicle parking. In line with the decision to consolidate these two acts into one act, certain sections of each act containing similar provisions were combined into one section for each provision. Therefore, following the outline of provisions, as set out in the Analysis of California District Laws, the committee decided to combine the provisions dealing with functions, formation, protests to, changes of boundaries and governing body. However, the sections containing the provisions dealing with area covered, bonds and assessments, were kept in the alternative, since these provisions were substantially different. This was done so that an area could still form a parking district and have the choice of using those provisions that would best suit their needs and demands. This was intended to meet the objection raised that consolidation of these two acts was not possible because both acts provide for alternative methods of financing, and an area or a city should have a choice of method.

Beside the question of consolidation, it was pointed out at the hearing that none of the three acts involved contained dissolution clauses. Therefore, in line with the committee's policy to insert such clauses into special district acts, it was decided that such a provision be put into the Parking Authorities Act of 1949, and a similar provision be placed in the new consolidated act.

PART III

CEMETERY DISTRICTS

Presently there are approximately 240 cemetery districts in the State. According to the 1958 Annual Report on Special Districts published by the State Controller, all of the cemetery districts except for one and thirteen, for which the authority is unknown, are formed under the Public Cemetery District Act, H & S 8990-9225. The one not formed under this act is located in Lassen County and is formed under the Public Cemeteries Act, H & S 8125-8133, which gives a city or a county the authority to set aside five acres of public lands situated in or near the city or town for burial purposes.

The committee decided to include this area into its special district hearings in San Francisco to investigate the possibility of repealing this little-used section of the code and thus leave only one cemetery district act. This action was initially prompted both by the code commissioners' note found in the Deering Codes which stated "The provisions of Sections 8125-8133 relating to public cemeteries may be obsolete in fact, as it may be that there are no lands now available for the establishment of such cemeteries," and the fact that the controller's report listed both acts as authorization for cemetery districts in the State.

At the hearing it was pointed out by the following testimony of Martin Anderson, Chief of the Division of County Budget Reports, State Controller's Office, that actually the cemetery formed under this act and any which would be formed in the future should not be in the true sense of the word be considered as special districts.

One cemetery district is shown in the report as a special district under the provisions of Health and Safety Code Sections 8125-8133. This is because that county treats it as a special district and it has been shown in the report as such rather than to omit it from all reporting. We believe that this is a part of the county operation and should be included within our report of Financial Transactions concerning Counties, instead of the report concerning Special Districts. No attempt has been made to determine how many counties and cities operate cemeteries under these provisions but it is possible that there are quite a few. As this appears to be the only provision whereby a city or county can operate a cemetery, it might be desirable to retain the provision. Repeal of the act could mean that the only remaining action would be to form a cemetery district. There might be cases where it would seem desirable to operate a cemetery by a county or city rather than the formation of a new district for the purpose.

As a result of this testimony, the committee contacted the district attorney in Lassen County to inquire concerning the status of this cemetery. His reply stated that after a study was made by his office, it was decided that no public cemetery district was ever formed under H & S 8125-8133, and that the county will not report this cemetery as a special district in the future.

Especially in view of the testimony of Mr. Anderson and Lassen County's reply, it was decided to leave this act alone since it actually did not authorize a special district but rather was a part of a county

or city function, and also because it might be of some use to a few of the small population counties.

Also at the hearing, Mr. Alan C. Brown, President, California Association of Public Cemeteries, testified that his organization was making a complete review of the code concerning cemetery districts.

One of our major projects for the next few years is to go over the code under which we operate and try to correct some of these obsolete passages. Last year we were before the State Legislature trying to do some of those things, some we did get through and some we did not. In the future we will try to correct even more of these obsolete passages.

During the course of the hearing it was pointed out that the Public Cemetery District Act had no dissolution clause. In view of the committee's policy to require that most special district acts contain dissolution procedures, it was decided to put in such a clause.

In addition to the above testimony, the committee heard statements concerning the question of requiring cemetery districts to set up an endowment care fund. In support of this, Mr. Robert M. Wash, County Counsel of Fresno County in a written presentation submitted to the committee, testified as follows:

I would suggest that the committee seriously consider the advisability of requiring, by mandatory language, all public cemetery districts to set up an endowment care fund in accordance with Section 8738 of the Health and Safety Code, which is a requirement for private endowment cemeteries. This should reduce and ultimately practically eliminate the burden upon the general taxpayer of maintenance of graves of public cemetery district cemeteries.

However, Mr. Brown of the California Association of Public Cemeteries opposed the plan, stating that in his association they believe the people voted in these districts and expect to pay tax money to support them, and then not to have to come back and pay again in endowment care. The committee decided not to take any action on the problem at this time since the main interest of the committee was to effectuate consolidation and/or elimination of special districts and the committee felt that the endowment care problem was a field of study in itself.

PART IV

DISTRICTS RELATING TO THE CONTROL AND DISPOSITION OF GARBAGE

According to the Legislative Counsel's Analysis of California District Laws, there are four main acts which deal with the control or disposition of garbage. Actually, in the chart found on page 244 of the main report (1954) there are five such acts listed. However, one of these, the Local Health District Act, deals with health inspection of garbage disposal works and other works only, and further, that act was amended in the 1959 Session so that no more of these districts

could be formed after October, 1959. Consequently, the committee in its study limited itself to the other four acts which are

- 1 County Sanitation Districts Act—H & S 4700-4859
- 2 Garbage Disposal Districts Act—H & S 4100-4163
- 3 Garbage and Refuse Disposal Districts—H & S 4170-4197
- 4 Sanitary Districts (Act of 1923) H & S 6400-6917

(For the purpose of clarity in this report, the County Sanitation Districts Act and the Sanitary Districts Act will be called the "sanitation" acts and the Garbage Disposal Districts Act and the Garbage and Refuse Disposal Districts Act will be called the "garbage" acts.)

The two "sanitation" acts are also the two main sewer districts acts now in operation in California. During the interim of 1957-59, this committee made an intensive study into the sewer district acts, and as a result, published a report entitled *Special Districts in the State of California. Problems in General and the Consolidation of Sewer and Fire District Acts*. In this report, the findings of the committee were stated as

Following the recommendations of witnesses at the hearings, in conjunction with research on the subject, it would seem that the following assumption could be made.

- 1 It is desirable to retain the existing County Sanitation District and the Sanitary District Act of 1923

According to the 1959 Annual Report on Special Districts published by the State Controller, there are approximately 104 districts formed under the County Sanitation Districts Act, 16 under the Garbage Disposal Districts Act, 2 under the Garbage and Refuse Disposal Districts Act and 127 under the Sanitary Districts Act.

Research of all four acts showed that the two sanitation acts, besides dealing with sewage, also dealt with the control and disposition of garbage. In comparing these functions with the functions listed in the two garbage acts, the committee found quite a bit of similarity and the functions of the two garbage acts seemed to be, to a great extent, covered by the two sanitation acts. This was the main reason why the committee decided to include these four acts in the special district hearing to see if there could be some consolidation. Actually, the committee was not inquiring into the possibility of consolidating the two sanitation acts since it had already decided not to do that during the last interim, but rather whether one or both of the garbage acts could be consolidated into one or both of the sanitation acts, or whether one of the garbage acts could be eliminated entirely.

Possible Consolidation of One or Both of the "Garbage" District Acts with One or Both of the "Sanitation" Acts

Mr. Joseph Gill, Counsel, County Sanitation Districts of Los Angeles County, was one of the chief witnesses at this hearing. He confined his comments to the subject of consolidation of the two garbage acts with the County Sanitation District Act, as it relates to the County of Los Angeles. His main contention was that he did not believe that such a consolidation would be feasible.

One of the reasons that he gave for this position was that in 1957 the County Sanitation District Act was amended so that the power to collect garbage from house to house was removed from the act. This was done at the instance of the Los Angeles County Sanitation Districts because of serious local problems which had existed in regard to collections in that county. Thus, under the act today the district cannot engage in any local collection. Therefore, should there be a consolidation of the acts, the County Sanitation District Act would have to be amended to put this power back in. This would again raise serious problems in Los Angeles County, as was brought out by the following testimony of Mr. A. R. Rawn, former Chief Engineer and General Manager of the Los Angeles County Sanitation Districts:

As I stated before, it was necessary for us at that time, and that was before we had an opportunity to ask the Legislature to amend the law to eliminate the collection feature, to enter into a contract with every one of our cities, which provided that they would act as the agent of the sanitation districts for the sum of one dollar to do their own collection. That was the contract which we entered into. That smoothed the situation out and it is the understanding there now, in the growth of this operation, that the sanitation districts will not enter into the collection business. I think some day it may be possible that when this past record of experience is more or less forgotten by the present generation of refuse collectors in the southern counties, that this permissive legislation might be incorporated, but to do it now I think would create a very great disturbance in our county, if it does not in some of the others.

Other reasons for the position against any consolidation of the acts were given by Mr. Gill in the following testimony:

The proposed possible consolidation of garbage disposal districts with sanitation districts has been discussed briefly with the board of directors of some of the districts and their general position is that they do not welcome or desire the consolidation of garbage disposal districts with county sanitation districts and they know of no reason why the garbage disposal districts should be eliminated.

Perhaps it is also worth noting that the Sanitation Districts have an ad valorem tax on real property in the district, and that a separate assessment is made for sewage disposal and a separate assessment is made for refuse transfer and disposal. The garbage disposal districts levy taxes on both real and personal property. Should garbage disposal districts be consolidated with the county sanitation districts, it would impose a third level of tax assessment by the district.

The garbage disposal districts in Los Angeles County, in fact, are confined to servicing the unincorporated areas and are, in popular contemplation, simply a department of the county. The nine garbage disposal districts (in the county) have the board of supervisors as their governing body, and the districts are administered under the Division of Sanitation of the County Health Office. The mayors, on the other hand, of the cities which constitute 57 of the 62 members of the board of directors of the 20 sam-

tation districts simply are not anxious to take over this county function and operation—at least not until asked by the county to do so

However, the opposite view was taken by Mr John A Nejedly, Jr, District Attorney of Contra Costa County He took the view that the two garbage acts could be eliminated since he saw no reason for their continuation in view of the existing general controls that could be exercised through the sanitation districts and through the 1923 Sanitary Districts Act He further suggested that the County Sanitation District Act be broadened to include the permissive power that the board may enter into the collection of garbage itself He stated in part:

We feel that with the alternative powers of the board to enter into garbage disposal and human waste disposal under a sanitation district, similar alternate powers under the 1923 Sanitary Districts Act, the establishment of some general franchise requirements, and the adoption—the compulsory adoption—of a master plan of waste disposal in the county which would be applicable to both types of districts, we would, in our county at least, have gone a long way to solve our problems.

The Possible Elimination of One or Both of the "Garbage" Acts

The committee at the same time looked into the question, if consolidation could not be effected as such whether possibly there could be an elimination of one of the garbage acts

Mr Gill, after listing his objections to the possible consolidation of the garbage acts with the County Sanitation Districts Act, stated that there might be a possibility for doing so by testifying

The objections just mentioned perhaps suggest that elimination rather than consolidation of garbage disposal districts would be more appropriate and advisable However, the sanitation districts are reticent to suggest elimination of the garbage disposal districts first, for the reason that from all indications the latter are doing a very creditable job, and secondly if Act 2 (Garbage Disposal Districts Act) were repealed and eliminated, it would probably require all refuse and garbage collection and disposal in unincorporated areas to be done by private operators Perhaps this might be deemed by some to be a good result, but the sanitation districts do not commend or embrace the idea

However, from an examination of the statutory provisions of Act 2 and 3 alone (the garbage acts) it would appear that perhaps, as a minimum, Act 3 (the Garbage and Refuse Disposal District) could be eliminated The only substantial differences between Act 2 and Act 3 are these: the governing body of Act 2 districts is the board of supervisors, whereas the governing body of Act 3 districts is a board of trustees appointed by the board of supervisors, if it is an unincorporated territory, and if cities are within the district, by the city councils as well Title to property of Act 2 districts is in the County and of Act 3 districts is in the District Act 2 districts have no power to incur bonded indebtedness, whereas Act 3 districts do have such power Act 2 districts tax both real and personal property, whereas Act 3 districts

tax only real property. It would appear that Act 2 districts are capable of doing all that Act 3 districts do except issue bonds. Should this be desirable, Act 2 could be amended to provide for bonding.

As mentioned earlier in this report, Mr. John Nejedly testified that as far as his county was concerned, the two garbage acts could be eliminated because he thought the two sanitation acts, properly amended, could take care of garbage disposal.

Mr. Dean Haug, Manager, South San Mateo County Garbage and Refuse Disposal District, which is one of the two districts in the State formed under the Garbage and Refuse Disposal District Act, testified that his area was having some difficulty with the act in that they felt they would like an act with a little greater degree of flexibility, especially in the makeup of the governing body and in the power to change the budget. As to the possible elimination of this act he testified:

Basically, we feel that either this Act ought to be enlarged or it ought to be consolidated with another Act. We have no particular urge for the continuation of the Act other than the proper flexibility for us to operate effectively in the performance of garbage and refuse disposal.

PART V

FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

After studying the recommendations of the witnesses at the hearings and in conjunction with research on the subject, it would seem that the following assumptions and recommendations could be made:

- 1 Continue the policy of the Committee as established in the 1957 interim and not consolidate the two sanitation districts acts.
- 2 In view of the testimony of the witnesses from Los Angeles County concerning the problem of the county sanitation districts going into the active collection business, the Committee at this time decided not to consolidate either of the two garbage acts into the two sanitation acts. This would meet the objections raised by Mr. Gill and Mr. Rawn.
- 3 Amend the Garbage and Refuse Disposal District Act so that no more districts could be formed under the Act but at the same time permit those districts now in existence to continue operating. The main reason for this is that the Committee felt that the Garbage Disposal District Act is capable of doing all that this Act does if some minor amendments are made. Also, this recommendation is based in part on the testimony of both Mr. Nejedly and Mr. Gill in which they stated that this act is not necessary in view of the existence of the other acts, coupled with the statement of Mr. Haug that his people had no particular urge for its continuance. This procedure also will permit Mr. Haug and his district to amend the Act to obtain more flexibility if they so desire.
- 4 Amend the Garbage Disposal District Act to provide that if an area decides to operate only a disposal site, then it could issue bonds as now permitted under the Garbage and Refuse Disposal Act.

CHAPTER 3

CONSOLIDATED FIRE DISTRICT BILL

A. INTRODUCTION

During the 1957-1959 interim, the Committee, in its continuing study on special district problems, devoted a great deal of time to the possibility of consolidating certain fire district acts. As a result of this study, an interim report was published covering this subject and also the consolidation of certain sewer acts. That portion of the report listing the summary of findings as it relates to fire protection districts reads as follows:

SUMMARY OF FINDINGS

- 1 The law presently authorizes a fire protection district to form under the provisions of four fire protection district acts.
- 2 Only two of these acts are being used extensively, the County Fire Protection District Act and the Local Fire District Act.
- 3 These two acts are quite similar in their provisions and operation with one major exception—their type of governing board.
 1. The local fire district is governed by an independently elected governing board, while the county fire protection district is governed by the county board of supervisors or a board appointed by them.
- 5 In general, witnesses at the hearings agreed that these two fire district acts could be consolidated if some provision were made to retain both types of governing bodies.

In addition, the report listed the following recommendations:

On the basis of evidence presented to the committee by witnesses in the course of the hearing, as well as research work independently conducted by the committee staff, the following recommendations are hereby submitted:

- 1 The two major fire district acts, namely, the Local Fire Protection District Act and the County Fire Protection District Act should be combined into a Consolidated Fire Protection Act of 1959. Provisions for such consolidation should follow the procedure followed by the committee in the consolidation of the Park, Recreation and Parkway District Law enacted at the 1957 Regular Session of the Legislature, and
- 2 The Fire Protection Districts in One or More Counties Act and the Metropolitan Fire Protection District Act should be repealed.

As a result of this interim study and report, A B 920 was introduced during the 1959 General Session. The Legislative Counsel's Summary Digest of this bill basically outlines the purpose of the measure:

A B 920 repeals the provisions providing for the formation of local fire districts, metropolitan fire protection districts, county

fire protection districts, and fire protection districts in one or more counties. Substitutes therefor the Fire Protection District Law of 1959.

Allows existing districts created or organized under any of the provisions repealed to continue to exist and exercise any of the powers conferred upon them by such provisions until five years after the effective date of the new law. Permits any such district prior to that time to elect to come under the new law and provides that any district which does not do so shall thereafter automatically be considered to be a district formed under the Fire Protection District Law of 1959.

Provides for the formation of fire protection districts under the Fire Protection District Law of 1959, specifies the procedures therefor, and sets forth the general powers and methods of organization, operation, government, consolidation, reorganization, and dissolution of such districts.

Authorizes such districts to levy taxes and, with the approval of the voters, to issue bonds.

A B. 920 passed the Assembly but failed on the floor of the Senate on the last night of the Session. Last minute confusion as to whether this bill actually was the highly controversial Metropolitan Fire District Bill, A B. 919, or not, is cited by many as being the reason for its failure to pass the Senate. As a result, the subject matter was referred back to the committee for further interim study.

B. PRESENT FINDINGS AND RECOMMENDATIONS

As part of its current interim study on special district problems, the committee held a hearing in Los Angeles on October 26, 1960, a portion of which was assigned for the purpose of reviewing the subject of consolidation of certain fire district laws, as proposed in A B. 920 of the 1959 General Session. The committee at that time briefly reviewed its findings and recommendations of the 1957-1959 interim on the subject and discussed the possibility of reintroducing the measure.

Support for the reintroduction of the bill came from both the League of California Cities and the California County Supervisors Association. In calling for support of legislation of this type, Lewis Keller, representing the League, stated:

As you will recall, the League of California Cities supported A B. 920 at the 1959 Regular Session after a few amendments had been adopted to meet specific problems particularly relating to the subjects of withdrawal and distribution of a district's assets following inclusion of a district's territory by annexation, incorporation, or otherwise. After these amendments were adopted, we gave our full support to the bill. For that reason, we feel safe in stating that we would again support a bill of this type. We feel that there is a general need for legislation to consolidate the special district acts, and that the earlier efforts in connection with recreation districts and other types of special districts were very definitely worthwhile.

Mr. Jack Merelman, representing the Supervisors Association, shared the sentiments of the league by testifying

We hasten to applaud the work of the committee in this most vexatious area and we too will support you wholeheartedly were a bill along this line to be introduced in the next session. We certainly think it is a step in the right direction

As a result of this review of the subject matter, the committee strongly believes that its findings and recommendations, as recorded in the 1957-59 Interim Committee Report, still are sound, and in light of this, the committee unanimously recommends that A.B. 920, as last amended on May 28, 1959, be reintroduced at the 1961 General Session as a work product of the committee and that it be labeled and carried as a committee bill

CHAPTER 4

POSSIBLE STEPS TO INFORM THE PUBLIC OF THE EXISTENCE AND THE OPERATIONS OF SPECIAL DISTRICTS

During its study of special district problems, the committee has discovered the widespread lack of knowledge on the part of the average citizen concerning the existence of this type of government. The committee, along with others, has come to the conclusion that the average citizen usually is not aware of the existence of certain special districts, and if he does, he does not know how they operate. These citizens are located both in the incorporated and unincorporated areas of the State. The average citizen looks to the city or to the county for governmental functions and services and he usually does not realize that his recreation needs or fire defense needs are being met by a special district set up and operated for that purpose. As an example, the average metropolitan area resident, on the whole, would need to keep in touch with the officers and activities of as many as 8 or 10 special districts, the facts indicate that he does not. Because of their numbers and the small scale of their operations, there is little general public interest in their every day-to-day activities. The meetings of the governing boards are not well publicized, are not usually covered by the press, and do not draw an audience. In the Sacramento metropolitan area, for example, where from 50 to 75 percent of the registered voters can be expected to turn out for a city election, 30 percent is regarded as an excellent showing in a district election. Voting records indicate that a 10 percent turnout is about average. In fact, it is a common special district practice of certifying as elected a noncontested slate usually composed of members of the incumbent board.

Many reasons have been cited as the cause for this widespread lack of knowledge. Among the leading ones is the fact that many people are not aware of the amount of taxes which are levied by the special districts in their area. This has come about because in certain counties, and until recently in a great number of them, the annual tax bill was not broken down as to the exact amount being charged by each governmental unit. People would think that all their taxes went to the agency which sent out the tax bill, which usually was the county. They did not realize that a portion of the taxes was attributable to a recreation district, a fire district, or a sewer district, etc. Also, in many cases these tax bills are never seen by the individual taxpayer since they are sent directly either to the mortgage holders or the banking houses.

At the suggestion of some of the organizations involved in studying special district problems, such as the County Supervisors Association of California and the Contra Costa Taxpayers Association, the committee decided to devote some time to finding a method or means to alert the general public of the existence and operations of the special

districts. This was done on the theory that in order to have good and sound government on any level, whether it be on the state level, city level, county or district level, a well-informed electorate is necessary.

As a result of this, the committee devoted a portion of its hearing on June 15, 1960, in Sacramento to this subject. In advance of the hearing, the committee invited by letter a large number of witnesses representing taxpayers' associations, county government, district government, etc., and asked them to comment on the overall problem in general and specifically on the following two proposals:

- a. Introduction of legislation which would require all special districts to file with the county auditor in the county or counties in which they were located a copy of their budget, or, if they did not have one, a statement to that effect.
- b. Introduction of legislation which would require all county tax collectors to itemize on each tax bill the amount of taxes being assessed by each special district.

FILING A COPY OF THE BUDGET WITH THE COUNTY AUDITOR

In general, most of the witnesses agreed that requiring each special district to file a copy of its budget with the county auditor would help the taxpayer to get a true picture of the performance of special districts. This was brought out by the following testimony of Robert C. Brown, representing the California Taxpayers' Association:

"The proposal to require special districts to file a copy of their budget with the county auditor's office is certainly apropos at this time. Counties, school districts, special districts, and most all political subdivisions on the local level are right now in the midst of preparing their next year's budgets. We have known for a long time that we could not get a look at the true total cost of local government because certain jurisdictions were not reporting their expenditures. If the taxpayer is to be better able to evaluate the service for which he is paying, he is certainly entitled to at least have a look at the expenditure program.

"It is a subject of deep concern to many of us in this field, on which we are not able to arrive at objective studies, because the information is not readily available. This proposal, if enacted into law, will give the taxpayer a better opportunity to measure the performance of a special district in relation to another special district providing the same service. If he is aware of these costs he might be more interested in special districts and special district law consolidations, and not be so easily misled by the self-interested individual who is often responsible for the defeat of such consolidations. California Taxpayers' Association certainly recommends that this proposal be enacted into law."

Two other advantages of this requirement which were mentioned were, first, it would force some of the special districts which were operating without a budget to develop one, and second, it would aid taxpayers' organizations and the press to review the financial programs of all governmental entities within their area. These dual advantages were

pointed out by Harry L. Morrison, Jr., Executive Director, Contra Costa Taxpayers' Association:

"Legislation to require that all special districts file a copy of their budgets with the county auditor's office in the county or counties in which they are located was initiated at the direct request of the Board of Directors of the Contra Costa County Taxpayers' Association. The directors felt that many special districts are now virtually without financial control or review by the citizenry because of the multiplicity of special districts within most metropolitan counties and the inability of citizens' organizations, or indeed of even the popular mediums of communication such as the newspapers, to review the financial programs of many of the special purpose districts within the several counties of California. For instance, I myself, representing the Taxpayers' Association and charged with the duty by my directors of reviewing the budgets at least annually of the various special districts in Contra Costa County, find this physically impossible. My staff and I are simply unable to visit the over 150 separate offices of the special districts within Contra Costa County to attempt to review these budgets. Another reason why we have made this recommendation is in the hope that it will force some of these special districts to develop budgets. The remarks were made this morning that some special districts do not have budgets, and this is true. Many special districts simply set a tax rate, they decide how much of a lump amount of money they are going to need, or they simply go to the maximum of their tax rate and they establish that, and then they decide what they are going to do with it after they get the money in.

"We feel that forcing the districts to file a budget in the county seat once a year would place them under the force of public opinion to the effect that they would have to develop a budget, and any budget is an improvement over what some of the districts presently carry on in regard to their financial programs. It is almost unbelievable how so much of our public funds are handled as loosely as they presently are in many of the special districts within certainly Contra Costa County. Of this I can speak from experience, and if it is true in our county, then it must be true in other counties throughout the State of California. It would also give such organizations as my own and other citizen organizations, and the press, an opportunity to review on a comparative basis the various financial programs of the special districts, and we feel would have a real effect in bringing this to the attention of the public toward creating a greater economy and a greater attention to a more effective and efficient practice in providing the public services which these special districts are now designated to provide.

"Some of these financial programs of the special districts almost dwarf the annual budgets of counties in California. Some of them, as a matter of fact, are larger in geography than the counties of California. Some take in a number of counties and, consequently, should be of serious concern to the taxpayers and the Legislators who represent such citizens. For this reason, the directors thought it of great importance that such budgets should be centralized

where they could be easily reviewed by any citizen who desired to acquaint himself with the proposed expenditures of the several governmental units within his county, in order that a comparative viewpoint could be obtained of the expenditures of one unit of government with another. The arguments proposed by the representatives of the special districts to prohibit such legislation appear to be based upon a timidity concerning whether such information should be made easily available to the citizen and taxpayer."

There was some opposition to this proposal registered at the hearing. The objections were centered around two main grounds: one a philosophical reason, and the other, that this proposal might result in a heavy administrative workload. The objection based on philosophical reasons was made by Joseph C. Gill, District Counsel of the County Sanitation Districts of Los Angeles, and the Southeast Park and Recreation District:

"First, I would like to say with respect to the proposal that copies of the budget be furnished to the county auditor, we would object to that on philosophical reasons. We believe that under our present system of government, this committee and the Legislature should not discourage or destroy what I call comity and co-operation between public bodies. I say that for this reason: the sanitation district, for example, as a matter of practice, does furnish to the county auditor a summary each year of all the budgets of the various 20 county sanitation districts in the county. The park district furnishes some similar information to the county. I have inquired of both boards of directors and the staffs of each of these respective districts and am informed that at any time the county board of supervisors or the county auditor should telephone or write and ask for additional information, it would certainly promptly be furnished.

"I question the legislative wisdom of putting on the statute books a law requiring simple comity between governmental agencies. If this committee had tangible evidence before it of a request of the kind that I mentioned being made and being refused by a public agency, then I think it is high time that maybe a law be placed on the books to require comity to be performed when it was not performed, but until such time as there is evidence of the failure of co-operation between public bodies, I question the wisdom of making it mandatory to do so. I don't know for sure what tangible purpose would be served by making it mandatory to submit that which, in my opinion, is readily available upon request."

The objection based on the ground that this proposal might result in a heavy administrative workload was raised by Miss Peggy McElligott of the law firm of Kirkbride, Wilson, Harzfeld and Wallace of San Mateo. However, as it was brought out in the testimony, this additional workload of processing all of the budgets through the county auditor's office would not amount to much since the main purpose of this proposal, as envisioned by the committee, was not to have the budgets filed for the purpose of prior auditing and approval before they were adopted by the districts involved, but rather only for the purpose of

publicizing the operations of the district. This was pointed out in the following exchanges of statements between Miss McElligott and Chairman Bradley:

Miss McElligott: I don't think that any of the districts would have any extreme objection to merely filing a copy of the budget. I think that the feeling is primarily one that filing it with the county may put some county officials into the position where they believe that they, then, have some measure of control; this is the only thing.

Bradley: Well, that might occur. Sometimes I think there are some districts in some counties, at least, that do need a little publicity in regard to the budgets that they are handling, and at least by providing a common filing place, you do compel these districts, or you would compel these districts—let's put it that way—to bring into the public light their budget, which is one thing; and secondly, there would be a common and central location where these budgets could be examined by the public if they desired to do so.

McElligott: Assuming that it is purely a matter of filing at a central office, just as a matter of public record, what period of time are you contemplating for such a filing? Would it be required, say, by July 10th? That is now the time for filing with the county auditor.

Bradley: I personally don't have a particular feeling on that point, I don't think it is necessary that there be a specific time. I think there should be, however, a requirement that within a fixed period of time after the budget has been adopted a copy of it be filed with the county auditor's office. This would not, then, impose upon any special district the requirement that they change their procedure as to the time for the adoption of the budget but would still make that information available.

In addition to the above viewpoints, some of the witnesses, agreeing with the suggested proposal, stated that it did not go far enough in giving county government a policy of procedural control over independent board special districts. This viewpoint is exemplified by the following excerpt from the testimony of E. R. Stallings, County Manager of San Mateo County:

"Filing of budgets would afford no means of policy or procedural control, however, and components of the basic problem involve more serious matters than jurisdictional identification on the tax bill. They include wide dispersion of functional responsibility, which focuses attention on local affairs, obscures the fact that broader interests often are paramount, and hampers efforts to plan and administer areawide programs; multiplication of competing demands upon public financial resources of the county, coupled with inadequate fiscal policy review and control; lack of co-ordination in the establishment of service areas, frequently creating 'islands' of territory in need of service but economically unable to provide therefor, and duplication of facilities and programs, resulting in unnecessarily high service costs."

The proponents of providing more county governmental control over special districts suggested the following avenues of approach first, requiring periodic surveillance and auditing of districts by grand juries, second, providing for legislation requiring approval by the board of supervisors in all future cases of district establishment; and third, amending the Government Code to permit the establishment of a special district organization committee by the board of supervisors, with provision for the board to initiate proceedings for consolidation or reorganization of districts on the basis of committee recommendations.

Also there was some comment made by a few witnesses that in addition to filing copies of budgets with the county auditor the district should provide additional information on the operations of the district. M. D. Tarshes, County Executive of Sacramento County, brought out this point:

"I think that the idea of filing copies of special district budgets with the county auditor is an excellent one from the standpoint of providing information to the public. However, I think that it would be essential, if there were such a requirement, that the statute specifically indicate what should be contained in those special district budgets. Many of the districts do not adopt any formal budget, as such, and those that are adopted take many different forms. It would be an ineffective requirement to require filing of the budgets with the county auditor if there were not more care exercised as to what type of information should be included in the budget."

ITEMIZATION OF SPECIAL DISTRICT TAXES

The great majority of the witnesses who testified at the hearing agreed that there should be some method utilized whereby the taxpayers could be kept informed as to the amount of taxes being charged by the special districts in the area in which they reside. It was brought out that in many counties of the State this is being done now by one method or another. Some counties list the tax rate of each district in which the taxpayer lives, whereas other counties only state that so much of the overall tax bill is attributable to special districts. Still other counties just indicate the total amount due.

The majority of those supporting some method by which the taxpayer can be kept informed as to the amount of taxes he is paying to special districts favored a method whereby the total amount of taxes attributable to special district operations could be indicated separately in a lump sum, rather than itemizing the taxes charged by each special district. This viewpoint was brought out among others, by the following testimony of Harry L. Morrison, Jr., Executive Director of the Contra Costa County Taxpayers' Association:

"The proposal to require that all county tax collectors itemize the amount of taxes being assessed by each special district in each of the several counties on the county tax bill is an admirable suggestion and an ideal method to acquaint the taxpayer with the true responsibility for his taxes, and we recommend this. However, it is expected that the cost of such a program would probably be significant and this matter should be carefully considered in relation to the possible values of the presentation of such information

to the taxpayers. A modification of this proposal, which Contra Costa County has adopted, has been to state on the tax bill the four levels of government (i.e., county, city, school and special districts) for which the taxes are collected in a lump sum amount for each level of government. This has created a great awakening among the citizens of which units of government are responsible for what they formerly considered as their "county taxes."

Mr. E. R. Stallings, County Manager of San Mateo County, along with Paul Anderson, Chairman of the Board of Supervisors of Riverside County, testified that their counties are doing this now or are on the verge of bringing it into operation.

"I'm in sympathy with the objective of having the district tax rate broken down on the tax bill. We have had this bookkeeping machine operation type that you spoke of, Mr. DeLotto, for some time and we have actually placed on the tax bill the tax rates of all of the jurisdictions in which that property is being taxed. Tax rates really mean nothing, it's the dollar amount that the taxpayer must pay that is of real concern. We are going into the operation, such as Mr. Anderson explained earlier, of breaking down on the tax bill in dollars the amount that goes to the county, school districts, to the municipalities, and grouping together these special districts. When you consider we sometimes have as many as seven or eight special districts levying a tax on an individual piece of property, the mechanical process of breaking each of those down separately would be prohibitive in cost and it is doubtful if the tax bill in its present form, without some major alterations, could handle it. I don't know but what it might be well if each district had to publicize its tax rate. Certainly there is a crying need to have this information before the public so that they will know how much they are paying in taxes."

The question came up during the hearing as to whether any such proposal to itemize the taxes charged by special districts should be made mandatory or kept on a permissive basis. A majority of those indicating a desire to keep the taxpayer informed as to the amount of taxes he is paying for special districts mentioned that for the present it might be best to keep this on a permissive basis. This viewpoint was adopted by the County Supervisors Association of California, as indicated by the following testimony of Supervisor Paul Anderson of Riverside, representing the association:

"No mandatory legislation should be passed at the State level in regard to separation or taxes for special districts and purposes:

- A. It is of sufficient interest to each county to separate as far as possible within their capabilities, and I believe most of our counties are doing that now. We do it, but to set up every special district tax, where we have 200 districts in our county, would make it almost impossible and at the present time we don't have the mechanical equipment to do it—as large a county as we are.
- B. Only large counties would have the electronic equipment necessary for wide and numerous divisions without excessive manual operation and costs."

Mr. M. D. Tarshes, County Executive of Sacramento County, also called for this proposal on a permissive basis, repeating the contention that some small counties at this time do not have the facilities to fully accomplish this task.

"This proposal is related to a real public relations problem for counties. Boards of Supervisors are often held responsible by their constituents for all taxes shown on county tax bills, although the boards ordinarily do not have any real control over the budgets or tax rates of most of the agencies represented on the bills. Some counties have already taken steps to itemize these amounts on their tax bills, and in Sacramento we plan to have this type of itemization on our 1961-62 bills. However, we will be able to do this only because we are acquiring electronic punch card equipment—and many of the smaller counties in the State cannot as yet afford this type of equipment. Therefore, a mandatory requirement to show this type of information on tax bills would not be practical for many of the counties."

Also, the County Tax Collectors' Association, represented by Mr. Edwin Meese, Jr., Treasurer and Tax Collector of Alameda County, stated that even though the association was on record as being against itemizing on each tax bill the amount of taxes being charged by each special district because of the expense involved, particularly in smaller counties, they agreed in principle with the idea to lump all special district taxes into one sum and have that shown on the tax bill. He stated that this is already being done in Alameda.

FINDINGS AND RECOMMENDATIONS

As a result of the hearing on these two proposals, and in conjunction with independent staff study, the committee finds that there exists a widespread lack of public knowledge concerning the existence and operations of special districts. This is evidenced by the poor turnout in special district elections, both for officers and for issuance of bonds. Another indication of the lack of citizen interest in special district government is the fact that few metropolitan area residents are able to name one or more of the districts in which they live.

Based on the premise that an informed electorate and public makes for better government, the committee recommends that legislation be introduced which would require that all special districts file a copy of their budget annually with the county auditor so that the public, the press, taxpayers' organizations, and other similar groups may have ready access to these public records in order to become better informed as to the operations of these governmental units. In addition, the committee recommends that legislation be introduced which would require that the tax collector indicate on each annual tax bill the amount of taxes in a lump sum which are attributable to special district operation, with the exception of that attributable to school districts which should have its own category. The committee feels that such a proposal would have the virtue of informing the taxpayer as to where his tax dollar goes and which public agency, in general, is responsible for the tax extracted, and at the same time, since each special district tax would not have to be itemized, it would not be too

difficult or expensive for smaller counties to carry out this task. The committee further believes that whether the amount stated on the bill should be in dollars or cents or in total percentages is a minor problem which can be worked out with all agencies concerned.

The committee plans to continue its overall study of special districts so that the suggestions made by those witnesses advocating more county government control over independently governed special districts and the district representatives' answers to those suggestions can be given more thorough study and thought in the future.

CHAPTER 5

WITHDRAWAL OF TERRITORY FROM A SPECIAL DISTRICT AND DISTRIBUTION OF ASSETS

INTRODUCTION

Whenever a city annexes new territory which is also included within a certain existing special district, or whenever a new city is formed embracing territory included within certain existing special districts, the problem of withdrawal of that portion of territory which is included in both the district and the city arises. At times, after an annexation or incorporation, the city might have taken in only part of a district, and as a result, residents in that area are members of both the city and the district. At the same time, the city might be able to furnish, or is furnishing, the same type of services for which the district had been organized. Thus the problem of double taxation can arise. For example, if a city which has its own recreation and park department annexes a portion of territory which is included in a recreation and park district, the resident of the area involved has two governmental entities furnishing the same service for which he is paying twice, so to speak. When this occurs, usually there is some move made to withdraw that portion of territory included both in the district and the city from the district, thus leaving the district to serve only the unincorporated areas. However, at other times the city does not have its own recreation and park department and can contract with the district to furnish those services to that portion of the city included within the district, and as a result, the question of withdrawal of territory does not come up. On the other hand, if the question of withdrawal does come up, and it is accomplished, the matter of distribution of assets arises; that is, how much of the real and personal property stays with the district and how much goes to the city, if any.

During the 1959 General Session this subject came up several times as a result of various bills which were introduced by interested parties. Those bills primarily dealt with recreation and park districts and fire districts. The problem is not confined to those types of districts, however, but generally covers every single type of special purpose district which provides a municipal type of service. Since some of the bills did not pass the Legislature, and as a result were assigned to this committee for interim study, the committee decided to devote some time to this problem to see, first, if it could arrive at a fair and equitable method whereby a certain area which was included in both a district and a city, each of which offered the same municipal service, could withdraw from the district if it so desired, and second, if it could arrive at some fair and equitable formula for distribution of assets after such a withdrawal, which formula might be applicable to all districts.

In furtherance of this desire, the committee held a full day hearing on the subject in Los Angeles in December of 1959, and then another half day hearing in Los Angeles in October 1960. In between the two hearings, a great deal of time and effort was spent by various members of the committee and the staff to contact all interested parties both on the city side and the district side to see if some equitable solution could be arrived at. Copies of the transcripts of both hearings were made available to the public.

Even though the committee was attempting to reach some solution or procedure which could be applicable to all districts whose territory might be included in part within a city, it confined most of its study to the fire district field and the park and recreation district field, with the hope that if it could find a fair solution in those fields then maybe the same procedure and formula could be used in other fields. As a result, this section of the report will deal for the most part with those two fields.

FIRE DISTRICT PROCEDURE

In the 1959 General Session a bill (A B 1473) was adopted into law changing the formula for distribution of assets upon withdrawal of territory from a fire district. The procedure for the withdrawal of territory was not an issue during the session and as a result, the committee only acted upon the question of distribution. The law in effect prior to the 1959 Session provided that upon withdrawal of territory, all property and unencumbered funds on the date of withdrawal should be divided between the city and the remaining district in proportion to the assessed value of the real property of the territory so withdrawn and the portion remaining.

Many considered this old formula as being too rigid and one which was not completely fair. Mr. Lathon B. Brewer, Assistant Chief of the Los Angeles County Fire Department, in criticizing such a formula based completely on a proportionate basis stated:

*“Withdrawal of Area by Cities—*This problem is the most serious one that is presently faced by the fire districts in Los Angeles County. During the fiscal year 1956-57 there were 91 withdrawals from the Consolidated Fire Protection District. During the fiscal year 1957-58 there were 87 withdrawals, and during the fiscal year 1958-59 there were 102 withdrawals. In most of the above cases the involved territory was territory that has been built up in recent years, and again the older part of the community had contributed more in building up the assets of the district. Yet a division of assets was made on a proportionate basis.

“I would like to give you one example of area that was annexed to the county fire protection district on August 8, 1957. This plant had an assessed valuation of approximately 25 million dollars. On April 23, 1959, this particular plant was annexed to an incorporated city, and on May 6, 1959, was withdrawn from the county fire protection district. This area was furnished protection from the date of entry into the district until the date of withdrawal, which was a total elapsed time of 21 months. This department received pay for only 10 months of this time. Under the state law this city is entitled to a division of assets of the Consolidated

County Fire Protection District of approximately \$100,000. This case clearly illustrates some of the unfairness in the state law whereby the assets of the district are given to incorporated cities based on annexation of territory in which the annexed territory contributed little or nothing to the assets of the district. It seems to me that this, in effect, is confiscating community funds and distributing them to a city that is not rightly entitled to them."

As a result of these criticisms, A B. 1473 of the 1959 General Session (Chapter 1467) was adopted. It repealed the old formula and substituted in its place the following three-part formula

- (A) If the assessed value of the real property within the area withdrawn represents one-half of one percent, or less, of the total assessed value of the real property within the district prior to the withdrawal, as determined from the last equalized assessment roll of the property within the district, all of the property and assets of the district shall be retained by the district.
- (B) If the assessed value of the real property in the area withdrawn exceeds the amount prescribed by subdivision (A), the city and the district shall have six months from the effective date of the withdrawal in which, after giving consideration to all factors involved, including population, assessed valuation, the effect of the annexation or change of boundaries on the remaining portion of the district, the length of time the portion being withdrawn has paid taxes and the total amount of such taxes paid, and such other matters as should be considered in arriving at an equitable distribution, they may establish a mutually agreeable basis for the distribution of the assets and property of the district between the city and the remaining district. If this is done, the property and assets shall be so divided.
- (c) If, under the provisions of subdivision (B), no mutually agreeable basis for the distribution of the property and assets of the district is reached within the six months period, on the date the district ceases to furnish fire protection service to the area withdrawn, or upon the end of the six months period, whichever is the last to occur, all of the property and unencumbered funds of the district shall be divided between the city and the remaining district in proportion to the average assessed value of the real property within the area withdrawn to the average assessed value of the real property within the entire district during the five years period prior to the effective date of the withdrawal, as determined from the equalized assessment rolls for such period. Also, the new sections provide that all funds and property received by the city shall be used exclusively and directly for the prevention and extinguishment of fires.

During the December, 1959, hearings in Los Angeles the committee invited comments on this new formula. The committee was primarily interested in finding out whether the formula was an improvement over the old one and whether it was acceptable or not. On the whole, most of the witnesses agreed that the new approach was an improve-

ment over the old but that it was not the final solution. In calling for continued study of this, Chief Brewer exemplified this viewpoint:

"Assembly Bill 1473 which was passed by the State Legislature in 1969 was an approach to this problem. This bill has two alternatives in reaching an agreement on a division of assets. These provisions are an improvement over the previous law but I feel they still do not fully meet the requirement of a fair and equitable law. I sincerely believe that it will be very difficult for the two parties involved to reach an agreement under these alternatives until a mathematical formula is established. In my opinion, this problem of division of assets needs further consideration and study."

Others, like Lewis Keller, representing the League of California Cities, and E. R. Stallings, County Manager of San Mateo County, expressed the viewpoint that it is almost impossible to formulate a statute which will itself take care of every single situation and, therefore, maybe an outside judge or arbitrator should be called in if no agreement can be reached between the interested parties. This viewpoint will be discussed at greater length in the portion of the report dealing with recreation and park district procedures.

RECREATION AND PARK DISTRICT PROCEDURES

A *Withdrawal Procedures*

Unlike the fire district situation, the main issue in the recreation and park district area is the procedure for withdrawal of territory from a district after a municipal annexation or incorporation. The distribution of assets issue is only a secondary matter. The present law on the subject of withdrawal procedures in the recreation and park district field (that is, districts organized under the 5700 series of the Public Resources Code) is somewhat confusing and ambiguous. As a result, there have been many conflicting opinions presented to the committee by various attorneys who specialize in this field. Because of these conflicts, an analysis of the withdrawal procedure has been requested of the Legislative Counsel by Chairman Bradley. This analysis is attached as an addenda to this report. However, for the purpose of this report, and in order that the reader may have a full understanding of the problems involved and the alternative solutions advanced by interested parties, the present procedures are hereby outlined in general and those areas which are ambiguous and which result in conflicting opinion are pointed out.

As the present law now provides, there are two main methods to initiate proceedings for withdrawal of territory from a district: one is by petition signed by a certain percentage of voters, and the other is by motion of the governing body of the district. However, as to the exact percentage of registered voters needed to sign the petition to initiate withdrawal, and whether it is a certain percentage from the whole district or from the territory seeking to be withdrawn, are matters which are unresolved since the present law seems to be confusing. As a result of the ambiguity in the law there are conflicting opinions from attorneys as to these points, but after the procedure has been initiated, there can be no withdrawal until the governing

body of the district so consents. There is general agreement among the specialists in this field on that point. However, if the governing board permits a withdrawal and if there is a certain percentage protest, then the issue must go to an election. At this point there arises another conflict of opinion because of the ambiguity in the law. Some hold the view that the withdrawal shall not become effective until approved by a majority vote from the entire district, and others state that only a majority vote from the territory seeking to be withdrawn is needed.

During the 1959 General Session two bills were introduced to change the procedures for withdrawal of territory. They were A.B. 1095 and A.B. 2743. Neither passed and as a result they were assigned to this committee for interim study. A.B. 1095 was the more drastic of the two. Basically it would have provided that if a part of a district was included within a city by incorporation or annexation, then the city council could effect a withdrawal without an election. A.B. 2743 was a milder and less drastic approach to the same problem. It distinguished between inhabited territory and uninhabited territory and permitted the phase withdrawal of territory with a requirement that a vote be held in inhabited areas but only in the area which is to be withdrawn. In addition, the power to initiate such a proposal would rest with the city.

During the December, 1959, hearing, the committee asked the various witnesses representing city, county and district government to comment on the present procedures and the various changes suggested by A.B. 1095 and A.B. 2743. Those representing district government on the whole spoke against placing the power to initiate withdrawal in the hands of the city. Mr. John F. Gunee, Attorney for the Hayward Area Park, Recreation and Parkway District of Alameda County emphasized that point and also suggested a slight change in the number of petitioners needed to start the proceedings.

"The board has authorized me to make the following statement

1. Placing the right to withdraw parts of, or all of, a city within the uncontrolled power of a city council, the very existence of that part of a district, and also the very district itself, would be uncertain. There would be no assurance of stability nor continuity of existence of any recreation district.
2. Placing this power in a city council would make the district in reality governed by the city council and would give the council such leverage over the recreation district as to put the unincorporated areas at a complete disadvantage.
3. A recreation district could not then plan beyond the next meeting of the city council.
4. Since the district could well be materially reduced in size, function, facilities and income on short notice and without any action on its part, it would be difficult to get and keep top flight administrators or personnel, who, in effect, could well be fired without notice by someone other than their employer.

- 5 The ability of a district to obtain credit would be impaired since the security of a district and its income could be taken by outside means.
- 6 It would make other than the most meager capital improvements almost impossible since a good capital improvement plan requires planning and is generally dependent on income over a period of years

"It is my opinion that the foregoing comments apply equally to a situation in which a city council by its own act could cause an election to be held on such withdrawal

"Since withdrawal of a city or part of it would seriously affect, and in many cases would even amount to a dissolution of the district, it is believed that any initiation of action to withdraw should require a petition of a given number of the people of the territory proposed to be withdrawn, rather than originating in as few as three members of a city council. It is believed that the present requirements of Section 5785 of the Public Resources Code for initiating action looking toward annexation to, or exclusion of, a district are unrealistic and impossible of attainment in that they require a petition signed by 25 percent of the number of qualified voters in the district. It is believed that this provision should be more realistic by amending it to provide that 10 percent of the voters could initiate such action."

The opposite viewpoint was taken by the representatives of city government. Mr. Lewis Keller, representing the League of California Cities, stated that his organization felt the provisions of A B 2743 (which provided that a city could initiate such a procedure subject to a vote in the area involved) were a very fair minimum request for a solution of this problem. This viewpoint was backed up by E. R. Stallings, County Manager of the County of San Mateo, who testified:

"We would like to address our remarks here not so much to the matter of disposition of assets upon withdrawal but to means of expediting withdrawal where it appears appropriate. To accomplish this end we suggest that those special district acts which seem to warrant such action should be amended to provide that whenever a portion of the district is annexed to an incorporated city, withdrawal of such annexed territory might be initiated by the city upon motion of its governing body. This we feel would be a reasonable and economic approach to the matter and should be a prerogative of the city, since certainly we expect the city to bear future responsibility for the area in all other matters."

During the period between the December, 1959, hearing and the October, 1960, hearing, at the direction of Chairman Bradley, the committee consultant, after discussing this matter with district and city people, prepared a worksheet proposal to be used for discussion purposes at the October, 1960 hearing. The purpose of the worksheet proposal was to have something concrete before the committee to which the various witnesses could address themselves in order to find out if there was any common ground between the opposing viewpoints on which there could be some possible agreement. The following proposal

was not meant to be a committee proposal, or a staff proposal, but only to serve as a reference point, so to speak. The various witnesses were asked to address themselves to the feasibility of the proposals in the report but not to be limited to them.

PROCEDURE FOR WITHDRAWAL OF TERRITORY FROM A RECREATION AND PARK DISTRICT UPON AN ANNEXATION OR INCORPORATION

- 1 Whenever all or any portion of a district is included within a city by incorporation or annexation, or otherwise, such portion may be withdrawn from the district.

The district and the city have a period of one year to reach a mutual agreement as to such withdrawal as it affects boundary changes. This one-year period will begin to run from the effective date of the annexation, or, in the case of an incorporation, the one-year period will not begin to run until either the city or the district so decides.

- 2 The following factors must be taken into account when such a boundary change is being considered:
 - a The present and prospective ability of both the city and the district to serve the area involved.
 - b The geographical location and other related factors
 - c Respective assessed valuation within and without the area involved.
 - d Ability of the district to survive and maintain the present standards after such withdrawal so that it can continue to serve the remaining area.
 - e The social and economic factors of the entire area
 - f Population
 - g The existence of other private and public facilities in the area
- 3 As an arbitration board, the city and the district may choose any of the following:
 - a The State Recreation Commission or similar state agency
(This is in case an agency is set up to deal with local government, such as the one being proposed by the Governor's Commission on Metropolitan Area Problems)
 - b Any individuals on whom the city and the district should agree
However, the arbitration board may not consist of less than three nor more than seven members.
- 4 The arbitration board which is chosen must apply the aforementioned factors in reaching their decision.
- 5 The board must reach its decision within one year, or within a shorter time as may be mutually set by the city and the district. The decision of the board is final.
- 6 If the decision is that there is to be no withdrawal, proceedings under this section cannot be initiated for two years from the date of the decision. However, if both the city and the district mutually agree, proceeding can be initiated at any time after the decision.
- 7 The board may hire a staff and all necessary costs are a proper charge against both the city and the district. If a state agency is used, it may impose a fee for this service.

8. If the decision of the board is to the effect that there will be a withdrawal, it will not go into effect until the following February 1
9. When any territory is withdrawn from a district, it shall continue to be liable for such portion of the bonded indebtedness or other indebtedness of the district incurred before its withdrawal, the same as it would have been liable had it not withdrawn

Mr. Keller of the League of California Cities testified that this proposal represented a fairly sound general approach to the problem

"Here the initiation is permitted to be at the city option but there would be no reason why this couldn't be brought about from a petition in the area. The idea of changing political boundaries by what you might call an arbitration board is new but this is not, as I understand this proposal, one where the power of decision would be vested in this arbitration board. This would be a condition precedent to action by the city, and one of the conditions would be the obtaining of a verdict by the arbitration board, after which, if the city sought to withdraw and had originally asked for the determination based on these factors, then the elected body representing the city could accomplish the withdrawal. In other words, this would be similar in theory to the Fire Protection District Act withdrawal provisions, except that there would be a fact-finding condition precedent. There would be, certainly so far as we are concerned, no objection to a vote requirement if the vote requirement were made by those residents of the territory involved. A vote of the residents in the territory which could be compelled by a petition or by some other form of action originating either with the city or originating with residents and property owners in the city would be perfectly satisfactory."

The opposite viewpoint was expressed, however, by the representatives of the recreation and park districts. They strongly urged that at no time should there be a withdrawal of territory from a district without an election of all of the electors of the district. Mrs. Alice Wilder, Legislative Chairman of the California Association of Park and Recreation Districts, did not disapprove of the idea of an arbitration board so long as the requirement of a vote in the whole district was not eliminated.

"We believe that a petition in proper form signed by at least 10 percent of the number of the district's electors at the last general election should be presented. An arbitration board should then set up in manner suggested. A feasibility study as suggested should be made within a maximum time limit of one year. Should the study recommend against the withdrawal, the subject should not again come up for a period of two years after the date of decision. The cost of the study should be borne by whichever entity initiates the proceedings.

"Should the arbitration board recommend for withdrawal, then the electors in all the territory of the recreation district votes on the withdrawal."

DISTRIBUTION OF ASSETS

The issue of how to distribute the assets after a withdrawal of territory is effected was only a minor problem as compared to the issue of withdrawal procedures. Most witnesses representing district and city government stated to the committee that the matter of distributing the assets, once there had been a withdrawal, can probably be worked out on a mutual basis. However, most of the city witnesses stated that it would be best if there were some provision in the law stating that there should be a distribution and then leave the distribution up to arbitration between the parties involved.

The present law provides that when there is a withdrawal the district shall retain title to and possession of all the property of the district. However, it provides that the district may convey all or any part of such property to the city with or without payment of consideration therefor, as the governing body of the district determines. Most of the city representatives feel that this is too rigid and desire some provision stating that there should be a division of assets, but that no definite formula, as in the fire district law, should be included. Instead it should be left up to arbitration. This viewpoint was expressed by William Camil, Mayor of the City of Santa Fe Springs.

"A city when withdrawing from a fire protection district is entitled to a division of assets based upon the proportionate share of the city's assessed valuation to the total assessed valuation of the district. This is equitable for fire purposes because of the contribution through the years toward the capital assets of the fire district by the city. In most cases, a heavy percentage of the assets of the fire district are represented in current operating expenses. The same situation is not true in park and recreation districts where a good share of the assets would be in the form of local parks or real property investment. To use a direct proportion of assessed valuation and capital assets would undoubtedly impoverish a park and recreation district due to its very nature of tax supported financing. Some capital assets, or park areas, may no longer be of any use to the park district after a city has withdrawn area from the district.

"There does not seem to be any specific formula that will assure equity throughout the State when this situation arises allowing a city to withdraw from a district.

"We are of the opinion that the problem of division of assets in any individual case should be left to negotiation between the city council and the governing board of the district, with a provision that neither body could use their power of negotiation as a veto power to prohibit withdrawal action.

"Your committee may wish to consider allowing an independent state agency to act as an arbitrator in determining an equitable division of assets where the interested parties cannot reach agreement."

This viewpoint was echoed by E. R. Stallings, County Manager of San Mateo County.

"In regard to the disposition of assets, we are aware that there are several basic philosophies applicable to this problem. We sug-

gest that a satisfactory answer might be a procedure similar to that contained in several existing acts, providing essentially that determination of the distribution of assets shall be agreed upon mutually by the governmental agencies concerned within a given period of time, for example, one year, and that if no such agreement can be reached, a board of arbiters be appointed by the agencies "

However, the witnesses representing district government were inclined to leave the law as it is. Mr. Gill, District counsel for the Southeast Recreation and Park District, in calling for retaining the status quo with the city representatives, agreed that a formula as prescribed in the Fire District Law would not be feasible or practical.

"With respect to the disposition of assets upon withdrawal of territory from a district and which territory is within a city, we do not believe that the formula prescribed in AB 1473 is feasible or practical for application to recreation and park districts. It is not possible to divide parks nor is it practical to sell them in order to make a division. The most reasonable solution for disposition of assets appears to us to be in the existing law which permits the district to convey, with or without consideration, such property to the city as it determines to be equitable. Since there are no two situations in the State entirely alike and to which any set formula can be applied uniformly and equitably, it would appear better to leave the law as it is."

One of the reasons cited by the district representatives for keeping the present law as it is was that a district would on its own accord transfer assets and property after a withdrawal had taken place. John F. Gunnee, attorney for the Hayward Recreation and Park District, stated that a district could not operate facilities feasibly in an area which had been withdrawn.

"In regard to the problem of the disposition of property of a district when a withdrawal has occurred, it is believed that Section 57853 is adequate and fair to both a city and district. It may be contended that these provisions give the district practically sole control, but such contention does not reckon with the economics of park or recreational facilities operation. If there is a district park or facility in the city, or part of a city, withdrawn from the recreation district, it does not seem to me that the district could afford to operate such park or facility when there will no longer be any taxes coming from the residents of the city who are served chiefly by such facility. In such event, it is my opinion that the district would not hesitate to divest itself of the ownership and operational burden of such a park or facility."

COMMITTEE FINDINGS AND RECOMMENDATIONS

A. Fire District Procedures

The committee finds as a result of the Los Angeles hearings, and independent study and research, that the present formula in the fire district law is an improvement over the rigid proportionate basis formula in the previous law. The committee believes that this formula

is an approach to the problem even though it might not be the best solution at this time. However, since the law is a relatively new one, the committee believes that more time should be given to allow this provision to operate and then at a later date study it to see what improvements are needed. It might be that once the committee finds a fair and equitable solution to be used in every special district proceeding of this type, then it might be possible to apply that formula to the fire district field also.

B. Recreation and Park District Procedures

In view of the fact that after intensive study and much research the committee was not able to find a common ground on which the district representatives and the city representatives could agree so that a fair and equitable solution to this problem could be found, the committee feels nevertheless that through its hearings and conferences it has helped to clarify the problems and to crystalize the main issues.

Since both organizations in this field, the League of California Cities and the Recreation and Park District Association, are contemplating legislative programs in this field for the next session, this committee believes that it should not make firm and definite recommendations at this time but should stand ready to listen to the various viewpoints as they come up during the session and give each one a fair and complete hearing. As a result of its interim study, the committee is completely familiar with this problem in all of its aspects and it will have this report and the transcripts of the two hearings to refer to during the course of the session so that it can more accurately weigh each legislative proposal.

In addition, the committee firmly believes that some clarification must be given to the law so that the ambiguities now existing can be cleared up and thus prevent long and costly litigation. The committee hopes that this will be accomplished during the next session. Also, the committee plans to continue its study of this portion of the overall special district problem to determine if it is feasible to come up with some formula or solution for withdrawal and distribution of assets which would be fair and equitable to all concerned and which could be applicable to all special districts which perform a municipal service.

In conclusion, the committee believes that the following should be kept in mind in the consideration of any legislative proposal concerning the withdrawal procedures:

- 1 The present and prospective ability of both the city and the district to serve the territory involved
- 2 Respective assessed valuation within and without the area involved
- 3 Geographical factors of the area
- 4 Ability of the district to survive and maintain the present standards after such withdrawal so that it can continue to serve the remaining area.
- 5 The social and economic factors of the entire area
- 6 Population
- 7 The existence of other private and public facilities in the area.

Also, the committee believes that in addition to the above, the following factors must be borne in mind when considering any legislative proposal having to do with the distribution of assets upon a withdrawal.

- 1 Historical contribution of the territory to the assets
- 2 Geographical location of the facilities
- 3 Location of the people using the facilities
- 4 Present and prospective ability of both the city and the district to administer the facilities
- 5 Relevant economic factors
- 6 Present and prospective development of the area involved

CHAPTER 6

CONCLUSION

The committee believes that further study should be given to the problem of consolidating special district acts in other fields. Continued efforts on the part of this committee will be made to attempt consolidation in each field of governmental operations where there is found to be a multiplicity of special district laws authorizing a district to handle such an operation.

In addition, the committee feels that tailormade legislation in the special district field should be avoided wherever possible. It has been shown that such legislation fails to adequately solve the overall problems of the expanding urban growth of California, in fact, at times such legislation hampers the proper growth of urban development.

In general, special districts should be encouraged to dissolve when their purposes are no longer necessary. In the past the need for single purpose special districts to provide a municipal type service to the rapidly growing unincorporated fringe areas of California was great but as cities and counties have expanded their services to take care of such problems, the need for such a district decreases. However, it has been found that such districts, at that point, fail to dissolve and as a result there is a great deal of duplication of services.

This committee plans to continue its overall study of the special district problem in the effort to eliminate excessive duplication, unnecessary services, and to effectuate true consolidation for the best interests of all concerned.

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, December 16, 1960

HONORABLE CLARK BRADLEY
802 First National Bank Building
San Jose, California

Recreation and Park Districts—No. 5435

DEAR MR BRADLEY We enclose our opinion in which we consider certain questions relating to the withdrawal of territory from a recreation and park district

In this connection, you have asked us to re-examine our opinion to you dated August 18, 1960 (District Organization Law, Req No 4501) to ascertain whether our answers to the questions in the enclosed opinion would cause us to modify our earlier opinion in any manner.

The earlier opinion referred to concluded that it is probable that the courts would hold that the residents of an entire recreation and park district must vote at an election on the question of annexation or withdrawal of territory. We have no reason to modify that opinion.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By ROBERT G HINSHAW
Deputy Legislative Counsel

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, December 5, 1960

HONORABLE CLARK BRADLEY
802 First National Bank Building
San Jose, California

Recreation and Park Districts—No. 5435

DEAR MR BRADLEY You have asked several questions relating to the procedure for withdrawal of territory from a recreation and park district after a portion of its territory is annexed to a city. These questions are set forth and considered separately below.

Question No. 1

How many signatures are necessary on a petition to initiate proceedings for the withdrawal from a recreation and park district of territory which has been included within the boundaries of a city?

Opinion No. 1

It is our opinion that a petition to withdraw territory under such circumstances must be signed by a number of registered voters equal in number to at least 25 percent of the number of votes cast in the territory comprising the district at the last succeeding general election at which a Governor was elected.

Analysis No. 1

It is provided in the Public Resources Code with respect to recreation and park districts that proceedings may be commenced looking toward exclusions of territory therefrom upon petition signed by the same number of qualified petitioners required for signature on the petition for organization of such districts (Sec. 5785, P. R. C.). The number of petitioners required on a petition for organization of a recreation and park district is prescribed in Section 5781.3 of the Public Resources Code, which requires a number of registered voters equal in number to at least 25 percent of the number of votes cast in the territory comprising the district at the last succeeding general election at which a Governor was elected.

As we understand it, your question has arisen because of the fact that in both of the sections of the Public Resources Code above referred to, reference is made to the procedure specified by the District Organization Law (Ch. 1, commencing at Sec. 58000, Div. 1, Title 6, Gov. C.). In that chapter is contained a section which provides for a procedure for withdrawal of territory from any public district which is annexed to a city by the petition of more than 1 percent of the total number of voters living within the territory to be withdrawn (Sec. 58250, Gov. C.). Also contained in that chapter is a provision that in case of a conflict between the provisions of the law providing for the

creation of a particular district or type of district and the provisions of the District Organization Law, the provisions of the District Organization Law shall prevail (Sec 58309, Gov C.) However, the law governing the creation of recreation and park districts with which we are here concerned contains a provision that notwithstanding Section 58309 of the Government Code, in the event of a conflict between the provisions of the law governing recreation and park districts and those of the District Organization Law, the provisions of the law governing recreation and park districts shall prevail (Sec 5780 8, P R C.).

Thus, under the legal principle that a special law controls over a general law (see 45 Cal Jur 2d, Statutes, Secs 119, 120), for the purposes of this question we do not look to the District Organization Law, but rather to the provisions in the Public Resources Code relating to recreation and park districts to determine the number of necessary signatures to initiate withdrawal of territory from such a district following an annexation to a city, and we find, as stated above, that the 25 percent figure is controlling.

Question No. 2

Must the signatures on a petition for withdrawal of territory be those of residents in the territory to be withdrawn or may they be residents of any of the area of the recreation and park district?

Opinion No. 2

In our opinion the petitioners may be residents of any area of the district

Analysis No. 2

Section 5785 of the Public Resources Code provides that a petition for exclusion of territory shall be signed by the same number of "qualified petitioners" required for signature on a petition for organization of a district "Qualified petitioners" are those referred to in Subdivision (b) of Section 5781 3 of that code, who must be persons who are registered voters from any of "the territory comprising the district."

Question No. 3

Is there any manner in which persons in the district petitioning the withdrawal of territory therefrom can bring the issue to an election if the board of directors of the district does not determine to call such an election?

Opinion No. 3

In our opinion the answer to this question is in the negative

Analysis No. 3

After the necessary petition has been filed with the board of directors of a recreation and park district, the law governing such districts specifically provides for the procedure which is specified in the District Organization Law (Sec 5785, P R C) The District Organization Law provides with respect to the exclusion of territory from a district that it is to be determined by the governing body of the district whether the exclusion is in the best interests of the district before an election is called on the question (Sec 58237, Gov C)

While we do not believe that Section 58250 of the Government Code is applicable here, as indicated under Question No. 1, because of the conflict between it and provisions of the Public Resources Code specifically relating to recreation and park districts (Secs 5780 8, 5785, P R C), even if Section 58250 were applicable, it also requires a determination by the governing board of a district after hearing that the services of the district are being performed by the city in substantially the same manner as by the district before an election can be held

We have found no statutory procedure whereby those petitioning for the withdrawal of territory of a recreation and park district can cause the withdrawal of territory therefrom in the absence of action by the board calling an election

Very truly yours,

RALPH N KLEPS
Legislative Counsel
By ROBERT G HINSHAW
Depnty Legislative Counsel

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COMMITTEE ON MUNICIPAL AND
COUNTY GOVERNMENT

House Resolution No. 326.16

ANNEXATION AND RELATED INCORPORATION
PROBLEMS IN THE STATE OF CALIFORNIA

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BERT DeLOTTO, *Vice Chairman*

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LETTER OF TRANSMITTAL

HONORABLE RALPH M. BROWN
Speaker of the Assembly
State Capitol, Sacramento 14, California

DEAR MR. SPEAKER: The Assembly Committee on Municipal and County Government submits herewith its report on Annexation and Related Incorporation Problems, one of the studies conducted by the Committee during the 1959-61 interim, in accordance with House Resolution No. 326 16 of the 1959 Regular Session.

This final report contains the findings, conclusions, and recommendations of the Committee on this subject.

Respectfully submitted,

DON A. ALLEN, SR.
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SUMMARY OF FINDINGS

The Committee finds the following are most of the basic underlying motivations for substantive changes in the present annexation laws

- 1 Strip Annexations
- 2 Islands
- 3 Right of City to Initiate Proceedings
- 4 Enforceability of Agreements between Cities
- 5 Irregularity of Shape
- 6 County Boundary Commission
- 7 Special Districts Competing with Cities
- 8 Defensive Incorporation
- 9 Single-purpose Cities
- 10 Competition between Cities for Annexation of Unincorporated Areas
- 11 Expansion Programs by Individual Cities
- 12 Concept of Metropolitan Government

And, as against the foregoing, the Committee recognizes that there remains this one basic factor to be considered, The Fundamental Rights of the Residents of an Unincorporated Area

The Committee also recognizes the following additional factors as being involved in the general field of annexation—incorporation problems

- 1 Need for Recodification of the Present Law
- 2 Liberalizing the De-Annexation Procedures
- 3 Liberalizing the Laws Pertaining to Consolidation of Cities
- 4 Cross-County Annexations

CHAPTER I

INTRODUCTION

A. PURPOSE OF THE INTERIM STUDY

During the interim period of 1959-1960, the Assembly Committee on Municipal and County Government, under the chairmanship of Assemblyman Clark L. Bradley, undertook, as one of its main subjects of study, a complete review of the present annexation and related incorporation laws. The purpose of this study was to review by a series of hearings and conferences the problems of annexation and related incorporation problems as they relate to municipalities and as they may affect the various counties of the State. The Committee felt that with the tremendous growth of California, particularly in such areas as San Diego County, Los Angeles County, Orange County, Sacramento County, the San Francisco Bay Area Counties, and other parts of the State, this was a subject of such importance that it was incumbent upon the Legislature to follow very closely the operation of these laws to ascertain if there is a need for any modification or improvements.

In 1953 and 1954 this committee conducted a study of this same problem. In its final report to the 1955 Session of the Legislature, the Committee stated the following conclusions arrived at as the result of that study:

"Under the theory that the substantive rights and prerogatives of all interested parties with regard to annexation are to be protected, the Committee concludes that the present annexation procedures—as contained in the Inhabited Annexation Act of 1913 and the Uninhabited Annexation Act of 1939—are essentially a workable and fairly equitable means of adding territory to an incorporated community.

"The Committee, however, recognizes the necessity of making certain changes in both acts to clarify ambiguities and overcome inherent abuses.

"It should be stressed, however, that statutory amendments and enactments per se cannot and will not terminate the annexation problems that exist in California for the statutory problems are but one phase of the problem area.

"The Committee concludes that inadequate planning and zoning in some unincorporated urban and suburban areas by the county, and the practice by some cities of down-grading county ordinances affecting subdivisions, zoning, roads, and drainage in an effort to induce annexation are as much, if not more, a problem than the aforementioned statutory changes. While these problems are extra-jurisdictional so far as affirmative action by this committee is concerned, the Committee is compelled to go on record so as to emphasize the need for local eradication of these conditions.

"The Committee further concludes that in any annexation or incorporation proceeding, the interests of all parties concerned

with the annexation or incorporation must be balanced as to the effect on the whole and not merely as it affects any part thereof. Any action taken with less than a sincere effort on the part of all concerned to look at the total effect from the contemplated action is not worthy of the present and contemplated protective mantle accorded all interests under our statutes. Advisability rather than expediency is desired."

The Committee believes that the soundness of these basic conclusions as stated in 1955 has been demonstrated by the annexation history since that time. The basic two acts have been "workable" in that a large amount of territory has been annexed by California cities, and they, on the whole, have been "fairly equitable." As stated in the conclusion, legislation cannot be a cure-all for annexation problems and that is true now as then. However, the Committee believes that because of the expanding urban growth of California this whole field should be reviewed again to determine whether these laws are still "workable" and "fairly equitable" in the light of events since 1955, and also can they be used in the 1960's when California's urban growth is expected to be the greatest in the Nation.

B. METHOD OF STUDY

To carry out this study, the Committee early in the Fall of 1959 laid out a program of study. It was decided to hold two two-day hearings, one in the South and one in the North, to hear from interested representatives of city, county and district government, and from individual citizens. Then after conducting these hearings it was decided to hold one final hearing in November, 1960, to hear from representatives of the three main organizations, or groups, which were involved in this field, namely, the League of California Cities, the County Supervisors Association of California, and the Governor's Commission on Metropolitan Area Problems. The first two hearings were to serve the purpose of bringing out the problems in the field and to suggest some solutions, and the last meeting was for the purpose of permitting the three main organizations to summarize the city viewpoint, the county viewpoint, and the Governor's Commission's viewpoint, respectively, using the issues and problems raised during the earlier hearings. Before each hearing detailed letters of invitation were sent out to city attorneys, managers, county counsels, etc., asking them to present the problems they are confronted with and to offer some solution if possible. At the first hearing held in January, 1960, in San Diego, thirty-eight witnesses testified, resulting in a transcript covering 270 pages. At the second hearing held in May, 1960, in Oakland, forty-one witnesses testified, resulting in a transcript covering 307 pages. These transcripts, along with the one on the final hearing, were made available to the public. It is felt that these transcripts contain a most complete documentation of California's annexation law, practices and problems, and they also contain a wide range of proposals for statutory and con-

stitutional changes to meet the problems. The Committee recommends their reading to those interested in the subject.

In addition to the hearings, the committee staff attended each of the meetings held by the Governor's Commission on Metropolitan Area Problems, at which concrete proposals on this subject in particular, and on metropolitan government in general, were discussed. The findings and recommendations of the Governor's Commission are discussed in a later chapter. Also, the staff attended various meetings and conferences held by the League of California Cities and the County Supervisors' Association on this subject. For the most part, staff reports on these meetings were sent to each Committee member so that he could have a complete picture of all the endeavors in this field and relate them to our Committee study.

C. SCOPE OF STUDY

On the whole, the Committee devoted most of its time to annexation problems and their solutions. However, since this field covers and touches nearly every phase of local government, other related matters came up and were discussed, especially in the field of incorporation and overall metropolitan area problems, but since each of these topics is a detailed subject of study in itself, the Committee tried to limit itself to discussing only annexation and related incorporation laws. As a result, the Committee findings deal primarily with those problems, but the statements presented by the League of Cities, the County Supervisors' Association and the Governor's Commission, which are included in this report, touch also on related metropolitan area problems since they are so closely allied to the annexation field.

CHAPTER II

REASON, RATIONALE AND PURPOSE OF THE REPORT

As stated in the introductory chapter, the Committee initially started its study of this subject with the idea that after hearing all interested parties and studying the transcripts of the hearings it would issue a report on the subject and make recommendations to the Legislature for adoption at the 1961 General Session. However, at the conclusion of the study the Committee decided that it might not be in the best interest of all concerned if detailed final recommendations on suggested changes in the annexation law were made by the Committee and passed on as Committee recommendations to the Legislature.

The Committee feels that it has heard all points of view from all the four main organizations, or groups studying this problem, and it is fully aware of their respective positions. These four are the League of California Cities, the County Supervisors Association of California, the Governor's Commission on Metropolitan Area Problems, and the Attorney General of California. Since the Committee knows that at least three of the four groups involved will be sponsoring detailed substantive legislative programs of their own at the next session of the Legislature, it believes that it should not make any substantive recommendations at this time and, therefore, in that manner it can judge more fairly the various proposals as they are presented during the 1961 Session. The Committee, using the transcripts of the interim hearings, can then weigh those proposals in the light of the studies and findings made during the interim period.

The Committee does, however, plan to introduce in the 1961 Session a complete recodification of the annexation and related incorporation statutes with minor substantive changes. This subject will also be discussed in a later chapter.

Therefore, the main purpose and intent of this report will be to set out a brief summary of the fact finding hearings in Oakland and San Diego, and then to present the viewpoints of the four organizations mentioned above. These points of view were contained in detailed presentations made before the Committee. The Attorney General's statement was presented at the Oakland hearing and the other three were presented at the final hearing in November, 1960. The League of Cities, the Supervisors Association and the Governor's Commission were asked to summarize their findings in this field as they relate to the problems that exist and to present their recommendations for possible legislative solutions.

It is hoped that this report will furnish to those who are interested in this field a complete picture of the problems existing at this time and the various solutions offered. In addition, the Committee has placed in the front of this report a list of its findings as to the basic underlying motivations for substantive changes in the present annexation laws and a list of various factors which are recognized as being involved in the general area of annexation-incorporation problems.

CHAPTER III

SUMMARY OF THE SAN DIEGO AND OAKLAND HEARINGS

To enumerate each proposal or suggested change in the law made by each witness would entail a great amount of space, considering the length of each transcript. However, in this chapter the major proposals for changes in the law as suggested at these two hearings will be listed. As stated earlier, the purpose of these two hearings was to hear from the individual practitioners in the field, such as city attorneys, managers, planning directors, etc., as to the problems they encounter and suggestions for possible solutions.

MAJOR PROPOSALS

(1) A Complete Revision or Recodification of the Annexation Laws

A great majority of the witnesses testified that the present laws in the Government Code relating to all types of annexation processes, and even incorporation processes, are too cumbersome and burdensome and they should be rewritten. Mr. James A. Nicklin, City Attorney for the cities of Arcadia and El Monte, summarized this viewpoint by stating:

the entire portion of the Government Code dealing with all types of annexation processes should be entirely rewritten at one time instead of being tampered with piecemeal. Session after Session, with repeated attempts being made to insert sections and add to existing sections, to the point where they have become so cumbersome as to be not only unintelligible but impossible of compliance in many instances. There have been more than 250 amendments to the annexation sections of the Government Code between 1949 and 1959. This would average better than 40 amendments per regular session of the Legislature during the last six regular sessions, and this is a lot of legislation in one small segment of our Code structure.

However, as to the manner and method of revision, there was some difference. Some witnesses testified that the basic policies as outlined in the present statutes are sound and that only a recodification is necessary to iron out conflicting sections so that the definitions in each section would be uniform, and so that the sections which are now unintelligible, or are subject to much interpretation, could be straightened out. On the other hand, other witnesses testified that preceding such rewriting, the Legislature should carefully establish basic policies concerning annexation and incorporation in the light of the needs of the people in this period of urban expansion. For example, the City of Santa Rosa testified that the present laws on this subject are not backed up by a consistent State policy. They testified that before such revision the Legislature must adopt a policy clearly stating "who is to supply what

services out of what revenues; exactly what in California are the respective responsibilities of Federal, State, County, City and District Governments?"

(2) A State Agency, Commission, or Regional Boards Should be Set Up to Handle These Problems

Many witnesses, a great majority of them representing cities, testified that some sort of State agency or commission should be set up to administer the annexation or incorporation procedures. Those proposing such a step, however, were not in accord as to what type of agency should be set up or how it should be operated. The City of San Diego called for a quasi-judicial body, but still allowing the area the right to vote.

We would propose that the State create an agency which would take over the duties of the present County Boundary Commission and, in addition to the services now provided by the Boundary Commission, such agency would also have the responsibility of studying all proposed incorporations and inhabited annexations relative to the merits and logic of the incorporation or annexation, and what services would be provided, the level of these services, and the probable costs to the taxpayers within the area. The results of this study should be made available to the property owners and voters of these areas prior to their final determination.

We would also propose that the cost of such study would be borne by the areas proposing annexation or incorporation

A few witnesses testified that such an agency or court should have the mandatory right to decree annexation without the right of popular vote following certain legislative standards. Still, there were other witnesses, some of whom also represented cities, who testified against setting up such a State agency on the ground that it would violate local home rule. Some of these witnesses were in favor of strengthening the present County Boundary Commission. Along these lines, Mr. Alfred W. Dibb, City Attorney of Huntington Park, testified as follows:

A county body which can render some service in addition to what the present boundary commission is able to render, especially by way of information, I think, would be extremely valuable. However, to place it on the State level, gentlemen, aside from the objections of home rule, would be getting away from this very intimate knowledge of the subject matter (possessed by the local officials on the boundary commission) that is most necessary in order to adjust these problems in these given instances, or to bring to light the problems which might come up.

(3) Granting the Power to Cities to Initiate Annexation (Herein also the power of cities to decree annexation)

Here also a great number of the witnesses, most of them representing cities, testified that cities should be granted the power to initiate annexation, especially in the fringe areas surrounding the city. However, there was a difference of opinion among those taking such a stand as to whether the people in the unincorporated urban area should have the right to vote on the matter

Some of them stated that the laws should be amended to permit city councils to initiate inhabited annexation proceedings by calling an election in the area proposed for annexation without the initiating petition and protest hearing now required. In touching upon this point, Lee M. Roberts, City Manager of Napa, declared:

... to permit the city council to initiate inhabited as well as uninhabited territory annexation proceedings would go a long way toward easing the tension and avoiding the exposure of signers of a petition to opprobrium from their neighbors. It is quite amazing the extent to which feelings will run in some of these matters, with cases of anonymous phone call threats, business boycotts, and the breaking up of a long standing bridge foursome having been reported. Because of the complicated laws, the opponents of an annexation always get a head start and often use false propaganda and frighten the voters.

On the other hand, others went further and advocated that not only should the city have the right to initiate, but also should have the power to consummate the annexation without an election. The North Carolina approach was offered as a possible suggestion by George H. Smeath, Planning Director for the City of Modesto, and the American Municipal Association principles on this were advanced by City Manager C. Leland Gunn of Bakersfield. The North Carolina plan gives the cities the right to annex land which logically should be a part of the city, even though the residents of the area to be annexed are opposed. This power, however, is subject to general standards or limitations imposed by the Legislature. The American Municipal Association proposal is that municipalities should have the authority to initiate and consummate by council action the annexation of unincorporated territory to promote the health, welfare, safety and economic development of the area and the entire community.

However, other witnesses testified against granting the power to annex without an election. As one witness, who in fact represented a city, stated in commenting on these forced annexation proposals:

... they remind me of the partition of Poland—without the consent of the Poles—and of the outrageous People's Courts of Red Russia and her satellites. They are high-handed, undemocratic and Un-American.

There were some suggestions that if the city was given the right to initiate the proceedings, still granting the people the right to vote, then there should be a time limit imposed upon the city so that, when an annexation is defeated, the city must wait a certain time before starting another; in that manner the people would not be "brow-beaten" into joining the city.

(4) Cross-County Annexation

At least five or six witnesses representing cities testified that growing cities located adjacent to county boundaries should not be precluded from expanding normally and extending their boundaries into adjacent county territory to provide needed and desirable municipal services. These witnesses stated that an increasing number of States allow cities

to annex across county lines and that unified cities operating in two or more counties are by no means uncommon.

Other witnesses on this point testified that they view cross-county annexations as a possible opening of Pandora's Box and they urged great caution in consideration of the problems of annexing across county lines.

On this matter, another suggestion, offered as an alternative to cross-county annexation, was that the procedure for adjusting county boundary lines should be simplified so that the boards of supervisors of the counties involved could get together and work out adjustments so that a city would not have to lie in two counties.

(5) Elimination of Islands, Corridors and Strips

Quite a few witnesses testified that islands of unincorporated territory which now exist should be eliminated by being required to join the city. In main, their position was that if it is the policy of the State that islands, corridors and strips should not be created in the future, it is a necessary corollary that those validly created in the past should be eliminated. Accordingly, legislation should be enacted which would authorize the annexation of validly created islands, corridors and strips, to their surrounding city upon a finding by both the city council of the surrounding city and the board of supervisors of the county that the property within such islands, corridors and strips, can be more economically served and will benefit from municipal services provided by the city. They felt that this would eliminate a large part of the existing service problem.

Mr E R Stallings, County Manager of San Mateo County, testified that legislation should be enacted which would permit the initiation of annexation proceedings by the Board of Supervisors where unincorporated islands of limited size and high density population exist. He further declared that it is only through procedures such as this that we can eliminate many problems in providing governmental services and eliminate tax inequities between residents of unincorporated areas and incorporated areas.

(6) Liberalize the De-Annexation Provisions of the Code

Four or five witnesses, mainly those in the San Diego Bay area, called for easing the de-annexation procedures so that it would not be necessary to have a vote of the entire city from which the area is to be de-annexed. They claim that the present laws are too complex and too difficult.

(7) Other Proposals

In addition to the above major proposals, the Committee heard testimony on many other suggested changes which are too numerous to list. There are approximately 200 other changes which were offered at the hearings dealing with clearer definitions of certain sections, changing of certain statutory requirements, lengthening and shortening the time for filing petitions, regulation on the shapes of annexations, prohibition against filing overlapping annexation proposals, etc. These might be classified, as far as this summary goes, as technical changes, but to those working in the field, such as the city attorneys, county boundary commissioners, etc., many are important changes which also need attention.

CHAPTER IV

APPROACH OF THE COUNTY SUPERVISORS ASSOCIATION OF CALIFORNIA

At the final hearing on this subject held in November, 1960, the representatives of the County Supervisors Association of California were asked to give the Committee their official points of view on this subject. This organization had devoted a great portion of the year to a study of annexation problems, and in addition, they had the benefit of the transcripts of the San Diego and Oakland hearings to help them outline the problems and crystallize their thinking in the matter. Mr. Paul J. Anderson, Chairman of the Board of Supervisors of Riverside County, and Chairman of the County Supervisors Association's Urban Problems Committee, delivered the policy statement on behalf of the Association. His entire statement, with the exception of some preliminary remarks, is included here so that the reader may have a full picture of county government's thinking in approaching the problems created by the great urbanization growth in California, especially as they relate to the annexation field.

The County Supervisors Association of California has labored long and hard in the development and pronouncement of two basic documents which "anchor" the total program and philosophical approach to government of the Association. These historic proclamations are known as the "Principles of County Home Rule" and the "Metropolitan Area Principles for Counties." The Home Rule Principles were adopted in 1957 and the Metropolitan Area Principles were adopted in 1959. Both sets of basic principles were proclaimed only after a long period of intense reconsideration and rethinking of the present and future role of county government in California. And now, every recommended program, every contemplated action, every new legislative proposal, and every suggested departure from present philosophy of the Association is measured against these sets of guiding principles. For that reason, Mr. Chairman, it is my feeling that the Committee will better understand the recommendations of the Association which I shall place before you this morning if the Committee has before it these two landmark documents which guide our every action. I sincerely hope that with a reading of the two sets of principles the Committee will have a deeper insight into the reasons and considerations behind and underlying the recommendations of the Association in the field of metropolitan area problems.

PRINCIPLES OF COUNTY HOME RULE Adopted 1957

1. The California tradition of local home rule and self-determination as applied to county government should be continued and

strengthened. It should find further expression in the constitution and the statutes. Particularly, the general law on county government should permit wide flexibility wherever possible so that resort to a charter is not necessary to achieve simple modernization.

- 2 Areas where counties act primarily as agents of the state in performing a state service and do so with substantial state financing should be distinguished from areas of local or mixed state and local interest, so as to provide a basis for indicating where statewide standards and supervision may be justified.
- 3 Counties should be free to determine the scope and the extent of the governmental services each will render, subject to the recognized need for some uniformity in the standard of performance of services of national or state-wide import.
4. In services of national or statewide import, the degree of uniformity required should be carefully determined in each case, with emphasis on the purpose of the individual requirement—to the end that uniformity will not be “uniformity for uniformity’s sake,” but in each case will serve a specific beneficial purpose and to the further end that the progress which can come only from the existence of a variety of administrative approaches and methods shall not be stifled.
- 5 Counties should be free to devise their own operating policies in all governmental programs not financed wholly or substantially by federal or state funds, subject to a requirement that such policies be definitely set forth in writing.
- 6 Counties should be free to devise their own internal organization, either under a charter or under general law.
7. Counties should be free to devise their own operating policies in such fields as purchasing, capital outlay and employment conditions, subject to a requirement that such policies be clearly set forth.
- 8 To assure direct responsibility to the people and to enable the enforcement of such responsibility, general control of the county government should be placed wholly in the board of supervisors.

METROPOLITAN AREA PRINCIPLES FOR COUNTIES

Adopted 1959

- 1 Leadership by counties is essential to the promotion of co-operative undertakings with cities and between counties, in order to achieve the most effective, equitable and economical solutions to metropolitan problems.
2. Counties already perform area-wide activities and must be prepared to accept increasing responsibilities for providing urban services, subject to the over-riding principle that, insofar as possible, the areas benefited shall pay the cost thereof.
- 3 In the interest of providing effective and economical services through democratic processes, local governmental functions must be concentrated in governmental agencies which are politically responsible and responsive, i.e., cities and counties.

- 4 Metropolitan problems and their solutions differ from one metropolitan area to another and require careful analysis, evaluation and appraisal at the local governmental level in terms of their applicability to the area in question. The potential of existing units of local government, i.e., cities and counties, to equitably, economically and effectively solve the metropolitan problem must be explored before resort is had to the creation of new and larger units of government.
- 5 State law relating to county government must permit wide flexibility so as to authorize counties to more effectively meet the problems resulting from rapid growth and to take constructive and preventive action, including annexation to and consolidation of special taxing districts.
- 6 Utilization of inter-agency agreements to solve metropolitan problems is preferable to the creation of new units of local government.
- 7 If the creation of a new unit of local government is necessary to the effective and economical solution of the area-wide problems, the responsibility for the government and administration rightfully vests in the elected city councilmen and county supervisors.
- 8 The creation of autonomous special taxing districts must be discouraged as their creation is detrimental to the effective solution of metropolitan problems.

The Urban Problems Committee of the County Supervisors Association of California has devoted 1960 to the complete review of that vast and diversified range of problems which, for the sake of convenience, all of us in this field have come to call "metropolitan area problems." Time will not permit me to lay before the Committee all of the ideas, suggestions, programs, and factors which the Urban Problems Committee considered during the year, but you have my profound assurance that each recommendation which we shall offer this morning is based on the most careful and objective study by many scores of dedicated and knowledgeable persons in the field of county government. Each of the six recommendations finds its source of support in the "Home Rule Principles" and the "Metropolitan Area Principles" and each is now a matter of firm policy in the County Supervisors Association.

With this background, then, I shall proceed now to a recitation of our recommendations and of the major considerations underlying our action. The County Supervisors Association of California respectfully submits for your consideration the following:

1. *The County Supervisors Association of California Supports the Enactment of Legislation Which Would Create a New State Agency or Department in the Nature of a "State Metropolitan Areas Commission."*

But—

- (a) The new agency would have *advisory* powers only with reference to boundary changes, annexation, incorporation, etc. by cities.

- (b) The agency would have *advisory* powers only with reference to boundary changes, etc., by autonomous, independent special districts (and no authority with reference to special districts for which a board of supervisors is the governing body)

Our recommendation envisions a procedure whereby cities or special districts seeking to annex, etc., before proceeding, would be required to wait for an "advisory" report from the new State agency as to the feasibility of the proposed action

This recommendation evidences recognition by county supervisors of the serious need for the assistance of an impartial agency—an organization having adequate staff and resources—in dealing with the problems of boundary changes, annexation, incorporation, etc. There is every evidence that these metropolitan area matters are so vast and so complex as to defy solution on the present basis. Experience has demonstrated that counties, cities and special districts lack the time, staff and resources necessary to a gathering and analysis of all the pertinent facts when a boundary change or other action is contemplated. In fact, much of the friction and ceaseless wrangling in the county-city-special district complex is borne of inadequate fact-gathering and fact-analysis.

More than that, each separate local unit of government lacks the necessary "observation tower" for making a proper assessment of the metropolitan area problem. Being so completely immersed in the complex of local government, it is difficult for a local governmental unit to "see the forest for the trees." It is believed that an advisory agency at the state level—from its detached vantage point—could render a real service by studying and analyzing the proposed action during a "holding off" period imposed on the interested units of government. The State agency uniquely would be in a position to study and report on the inter-relationship of local, area-wide and statewide factors.

In any event, I must make clear that our recommendation calls for the creation of a State agency with *advisory* powers only. To recommend a role beyond this for the State agency, it is quickly seen, would be to depart abruptly from those cherished home rule principles and metropolitan area principles which serve as our guide.

II. The County Supervisors Association of California Supports the Enactment of Legislation Which Would Establish Machinery for the Creation of Multi-Purpose Districts in Metropolitan Areas

We suggest that the law, as originally drawn, require that the new metropolitan area multi-purpose district include metropolitan planning and one or more of the following services: air pollution control, water supply, sewage disposal and drainage, transportation, terminals and related facilities, parks and parkways, law

enforcement, fire protection, civil defense, and any other metropolitan area-wide functions

But—

- (a) Elected local officials, county supervisors and mayors or councilmen, would constitute the governing body of the multi-purpose district
- (b) The creation of a multi-purpose district would be *optional* and *permissive* with power in the cities and counties constituting the metropolitan area to activate the district under law. There would be no power in the State agency to order the creation of the district or to force an election
- (c) There would be no State role in the establishment or operation of the multi-purpose district

By this recommendation, Mr. Chairman, it is seen that the County Supervisors realize the serious need for a metropolitan type district which would enable city and county governments to do the regional planning and to make adequate provision for highways, water supply and the other area-wide services noted above, that each separate local government is presently incapable of doing by itself. I stress again that our proposal calls for a metropolitan multi-purpose district called into being by the cities and counties in the metropolitan area and directed and operated by the elective representatives of those local governments.

In effect then, establishment of legal machinery whereby a metropolitan multi-purpose district could be activated would constitute another fine new example of cities and counties joining together and cooperating in the solution of area-wide problems—and this, without sacrificing precious home rule concepts to a detached super-agency over which the people through their elected representatives would have no control. It bears repeating that the new "State Metropolitan Areas Commission," if established, would have absolutely no role in the creation or operation of this metropolitan multi-purpose district. The machinery for the activation of the district will be on the books and cooperating city and county governments could take advantage of it if they wished.

III. The County Supervisors Association of California Supports A Revision of the Law Whereby Cities Would Have the Right to Initiate Annexation in Inhabited Areas, With Certain Limitations. The Question of Annexation Would Have to be Submitted to the Electorate in the Area to be Affected and There Would be a Rigid Rule LIMITING the Frequency With Which the Question Could be Resubmitted to the Voters.

The Committee will recall that at present cities can only initiate annexation in the so-called "uninhabited" areas. By this recommendation, the Association seeks to clear the way so that there is available another avenue or approach to the achievement of streamlining and modernization so sorely needed in the field of metropolitan area problems. At best, such a law might stimulate an annexation in the best interests of good government. At worst, if the

annexation is turned down, the law still would have called into play a rethinking by the electorate in the area to be affected of the efficiency and effectiveness of local government in that community

The proposed law, and very properly we think, would not permit harassment of the people in the "inhabited area" that would be affected. The key concept underlying this recommendation is embodied in the authority to cities to "initiate" annexation. The electorate in the area to be affected would still have the right to turn down the annexation at the polls. Laying this recommendation side by side with our home rule and metropolitan area principles it is quickly apparent that a proposal urging that cities be given the power to "initiate" and "consummate" annexation would be an unwarranted abandonment of those principles.

IV. County Supervisors Association of California Recommends That the Laws Pertaining to Annexation be Revised to Reflect the Streamlining Proposed in the Formal "Los Angeles County Recommendations."

The Committee will doubtless recall that at your San Diego hearing of January, 1960, you were made familiar with the formal, comprehensive proposals of Los Angeles for a much needed "clean up" and modernization of the annexation laws. Doubtless, you will join with the entire county family in commending Los Angeles County for its leadership and great interest in laboring to bring order and reasonableness to a presently confusing and difficult area of the law. We have studied the Los Angeles County proposals and feel that new legislation embodying their recommendations would do much to make the annexation laws more workable. We therefore recommend that your Committee propose legislation that would incorporate the proposals for revision of the annexation laws as advanced by Los Angeles County.¹

V. County Supervisors Association of California Lauds the Action of the Assembly Interim Committee on Municipal and County Government in Encouraging the Consolidation of Duplicate Provisions Contained in the Annexation Act of 1913 and the Annexation of Uninhabited Territory Act of 1939.

We hasten to applaud any action or approach which seeks to eliminate confusion and uncertainty in the law because such chaotic conditions invariably work to the disadvantage of the citizen and in derogation of the peoples' rights. Your action in taking the lead in eliminating duplication and uncertainty in the annexation laws is viewed as another significant advance in your broad and diversified attack on annexation and other metropolitan area problems.

¹Vol. 1, San Diego, January 1960 Transcript of Proceedings of the Assembly Committee on Municipal and County Government.

VI. County Supervisors Association of California Recommends That the County Service Area Law be Revised to Make the Law More Readily Usable and Thus More Effective by Providing:

- (a) For capital outlay or facilities in a county service area*
- (b) For the creation of a reserve for building construction or an accumulative building fund for construction.*
- (c) For workable time requirements in the law as to the creation of a county service area law*
- (d) For clarification as to transfer of indebtedness of a county service area upon annexation or incorporation of that area.*

Mr. Chairman, with proper revision, the County Service Area Law could be a very effective instrument in furtherance of efficient government under the elected board of supervisors. Readily usable, the County Service Area Law could do much to prevent further duplication, fragmentation and inefficiency by heading off the creation of independent special districts added to the burdensome number already in existence.

The Preamble to the County Service Area Law recites that "The Legislature recognizes the duty of counties as instrumentalities of State government to adequately meet the needs of such areas for extending governmental services and also recognizes that such areas should pay for the extended services which are provided." We in county government recognize, too, that we have a responsibility to provide services to our citizens and in many cases would hasten to provide those services through the creation of a County Service Area Law, but for features in that law which discourage its use. With the changes in the law we have recommended counties will be less reluctant to take advantage of the County Service Area Law and the end result will be that responsible government will be encouraged in counties. The County Supervisors Association will place before the 1961 Legislature proposed legislation which will effect the needed revision of the County Service Area Law and we respectfully enlist the endorsement and support of your Committee for that proposed statutory revision.

Mr. Chairman, you have heard our 6-point program in the field of metropolitan area problems and I commend it to the earnest consideration of the Committee. I deeply appreciate the privilege of appearing before you. If the Committee has any questions I will endeavor to answer them to the best of my ability.

CHAPTER V

THE LEAGUE OF CALIFORNIA CITIES' APPROACH TO THE PROBLEM

The League's presentation before the Committee was made by Lewis Keller, Associate Counsel of the League. The presentation is broken into two parts: the first one outlining the definite policy on annexation and incorporation adopted by the League's Board of Directors, the second part outlining a potential new approach in solving the problems which has not been adopted as a matter of policy by the League. However, both parts are included to give the reader a complete picture of the current thinking in this field. The first part is as follows:

The subject before your committee today is one of the most important confronting local government in California. It is also one of the most complex and controversial. The transcripts of your San Diego and Oakland hearings contain a most complete documentation of California's annexation law, practices and problems. They also contain a wide range of proposals for statutory and constitutional changes to meet the problems. You have heard from local representatives of most of the principal interests involved in the annexation process, including county, city, State, school, and taxpayer.

In 1953 and 1954 this committee conducted a study of this same problem, and concluded in its report to the 1955 Session of the Legislature that "the present annexation procedures—as contained in the Inhabited Annexation Act of 1913 and the Uninhabited Annexation Act of 1939—are essentially a workable and fairly equitable means of adding territory to an incorporated community." The committee further concluded that "statutory amendments and enactments per se cannot, and will not terminate the annexation problems that exist in California, for the statutory problems are but one phase of the problem area."

The soundness of these basic conclusions has been demonstrated by annexation history since 1955. The basic two acts have been "workable" in that a large amount of territory has been annexed by California Cities, and they have been "fairly equitable." Now, as then, it will be universally conceded that legislation cannot be a cure-all for annexation problems. The transcripts of this interim hear eloquent testimony to the need for a fundamental re-examination of the subject. We now ask whether the annexation laws, in the light of events since 1955, are sufficiently workable and sufficiently equitable, and whether legislation might not be effective in solving a larger part of the problem area than was considered possible in 1955.

The problems which have been presented to this committee are all directly attributable to the basic policy concepts underlying

the California Annexation statutes. The problems flow directly from application of the policies in a rapid growth situation. Only by some substantial policy changes can effective solutions be reached. A review of these basic policies and the problems which they create will be helpful in considering possible solutions.

I. Basic California Annexation Policies and Resultant Problems

A Annexation Proceedings Are Conducted Entirely by the City with No Review Other Than Judicial Review. Under the two principal annexation acts, the annexing city makes all of the basic determinations of its own jurisdiction, and the regularity of proceedings. These determinations are subject to review by the courts, but, unless attacked in the courts, are final and binding. This causes three problems which have been brought to the committee's attention. First, property owners and citizens in annexed territory complain bitterly in many cases that the City decides all questions of fact and law in favor of annexation. Secondly, this policy permits and even encourages competition between cities for the annexation of territory. Because of the city council's multiple role and plenary authority in annexation proceedings, the Legislature has lengthened the process considerably and has imposed a number of procedural limitations. These are designed to protect the citizen and property owner from hasty or abusive actions. Resulting length and complication of procedure creates the third problem. City officials and developers seeking annexation complain that the statutory procedures take too much time and are unduly complicated. At the committee hearing in Oakland, Deputy Attorney General Eugene B. Jacobs testified that "in our opinion the most serious defect in the present annexation statutes is the fact that the entity conducting the procedure and making the crucial determinations as judge, fact finder, and administrator is a party in most instances desirous of completing an annexation—the city council of the city to which the territory is to be added."

B The State Law Contains No General Qualitative Standards for Determining the Annexability of Territory. In California there is no statutory requirement that territory in order to be annexable must need municipal services, either presently or prospectively, or that the annexing city be prepared to provide needed municipal services to the territory following annexation. One narrow exception to this absence of qualitative standards for annexation is found in the so-called "greenbelt" provisions of Section 35009 of the Government Code. When this policy is coupled with the principle that protesting minority property owners can have their property annexed even though they have no need for municipal services, complaints of unfair treatment are inevitable.

C Contiguity Is an Absolute Requirement Determined by Non-Discretionary Standards of a Precise Mathematical Nature. Contiguity is a fundamental requirement in all California annexation procedures. Prior to 1951, the law merely required that territory be "contiguous" to the annexing city. In 1951, limitations were placed upon the use of "strips" to attain contiguity, and the creation of "islands" of unincorporated territory. The strip

limitations were couched in terms of measured dimensions, with exceptions for street strips. In 1955, street strips were limited in length to one-half mile. Subsequently, in 1957 and 1959, the creation of corridors and street strips of unincorporated territory was prohibited. These limitations represent an attempt to describe an almost indescribable group of physical and legal situations.

When these limitations are applied in conjunction with the property owner's protest the resulting weird boundary configurations are indeed awesome. The service problems which result from this boundary hodgepodge have been recounted at length by a number of witnesses. In addition the contiguity requirement frequently forces the annexation of property against the wishes of the owner. These problems are the direct result of the policy requiring contiguity and defining it in precise and measured terms.

D. Property Owner Protest Is the Basis for Veto of Annexations. The tradition in California's annexation statutes of permitting majority protesting property owners to halt annexation proceedings is also a direct contributing cause of most of the asymmetrical boundaries around the fast growing cities. Because property owners do not seek development of their properties at anything approaching a uniform rate, and because contiguity is an absolute requirement for annexation, strips are required in order for individual developers to annex without inviting a majority protest from those not yet ready to develop. The protest policy and the contiguity requirement together create the problems of irregular boundaries and forced annexation of nonconsenting property owners. In most cases the odd boundary configuration is the direct result of the city attempting to attain contiguity between a developer seeking annexation while at the same time avoiding a majority protest by an intervening property owner.

E. The Annexation Acts Are Applicable on a Statewide Basis Regardless of Regional or Area Characteristics. The annexation act are general laws applicable equally to all parts of the State. In recent years, however, the problems arising in the areas of most rapid growth and densest urbanization, principally Los Angeles and Santa Clara Counties, have been the chief basis for changes in the annexation acts. As a result, annexations in the balance of the State have had to follow a procedure developed to meet problems of which they are now aware. The law is uniform but the situations to which it is applied are diverse. This has created discomforts in those areas where the law has been fitted to situations for which it was not tailored. The isolated cities growing in a gradual manner without competition have had difficulty in understanding the new rules designed to regulate intensely competitive situations. The difficulty in attempting to fit specific statutory standards prompted by the needs of one area to annexations on a statewide basis was stated quite cogently in the Oakland hearing by Assemblyman Frank Lanterman when he said to City Manager Hood of Santa Rosa:

"I think that the competition of adjacent agencies, and contiguity, and all of these things that relate to our problem down

there, are entirely missing with you. We have elbow to elbow distance. We have a metropolitan area that is densely populated with six million people, with 68 cities, with entirely different incorporated area type problems than you have, and if we try to force the pattern of a design of responsibility and limitations on allocations of funds, limitations of privilege to provide services, county, city, district, etc., I am quite sure we couldn't fit that pattern to our problem, so we must have a general law that is more or less adjustable to meet local problems and not a fiat in limitations."

F. The Legislature Has Established No Consistent Policy Governing the Provision of Services at the Local Level. The existing legislation on annexation, incorporation and special district formation fosters confusion and overlapping in the provision of local services. A philosophy of laissez faire in special district formation prevails which expects property owners and residents of urbanizing communities to build a logical system of local government from a welter of alternatives without any guidance or direction from State government. The ease with which special districts can be established to meet single service needs, and the difficulty in eliminating them to make way for general purpose city government renders the plight of the suburban resident unenviable, and the role of city government in attaining orderly growth extremely difficult.

Each of the six foregoing policies contributes to the specific annexation problems which have been voiced to the committee at its earlier hearings. In the aggregate, these specific problems are the annexation problem of the State. It is believed that three general approaches to the problem are possible, and that any legislative program designed to meet the problem will necessarily fit into one or two of the three categories.

II. General Approaches to a Solution of the Annexation Problem

A. Recodification of the Annexation and Related Incorporation Statutes with Minor Substantive Change. The nearly unanimous testimony of all witnesses who considered the matter supports the conclusion that the annexation and incorporation statutes are badly in need of recodification. As the acts have been amended at each of the past several sessions to meet specific problems, they have become increasingly burdened with ambiguities and internal conflicts. The bulk of these defects can be corrected by a careful recodification designed to attain clarity with a minimum of substantive change. Although any resolution of ambiguities and conflicts will necessarily require that differences of opinion on the interpretation of existing law be resolved one way or the other, it is believed that agreement could be reached by all affected interests on legislation which would resolve the technical problems with minor substantive change.

These problems are outlined quite thoroughly in the statements to the committee made by City Attorneys Clair Carlson of Ventura, Roger Arnebergh of Los Angeles, James A. Nicklin of Arcadia and El Monte, Harry Williams of West Covina, and

Robin Faisant of Los Altos Hills It is therefore recommended that, independently of recommendations on any of the more controversial policy questions, the committee undertake to prepare through the office of the Legislative Counsel a recodification of the annexation and incorporation acts with the minimum amount of substantive change necessary to attain clarity.

B Recodification of the Annexation and Incorporation Statutes with Substantive Change as Required to Meet Major Problems.

In addition to the general rewrite of the statutory law, the specific problems developed by the committee study could be dealt with within the existing legal framework by a number of specific amendments This approach would treat each of the more controversial proposals separately, but within the procedural framework of the existing law In this general category, the League Board of Directors has approved and recommends for enactment the following proposals

- 1 *Legislation which would permit the board of supervisors of a county upon petition of a city to summarily annex territory which consists of an island, strip or corridor of unincorporated territory substantially surrounded by the petitioning city if such strip, island or corridor was validly created, such annexation to be based upon a finding by the board of supervisors that property within such islands and corridors can be more economically served and will benefit from municipal services provided by the city In 1951 the Legislature acted to prohibit "strip" annexations and annexations which create an island of unincorporated territory within the annexing city At that time the Legislature recognized that unincorporated islands and strips of unincorporated territory within a city create extremely difficult problems for both the county government and the city government in which they are situated Police and fire departments are normally limited in their operations to territory within the city limits, and fire districts and county sheriff patrols are likewise limited to serving the unincorporated area When reports or alarms are received involving fires or other incidents occurring within or "near" an unincorporated island or strip within a city, confusion regarding the precise location of the occurrence is inevitable In such cases confusion can result in responses by both departments, neither department, or the wrong department Similar difficulties are encountered in connection with flood control and street maintenance where lack of control on the part of the city over territory which is physically but not legally within its jurisdiction complicates and frustrates both county and city governments In these situations the county government which has control cannot effectively exercise it, and the city government which could effectively exercise control lacks it*

Following enactment of the strip and island prohibitions, to accommodate property owners wishing to annex, many cities created narrow corridors of unincorporated territory in order to avoid technical creation of islands This created the same

kinds of service problems which existed in the case of islands. In 1957 the Legislature acted to prohibit the creation of these corridors of unincorporated territory. In 1959 the Legislature added a prohibition against annexations resulting in the creation of unincorporated highway strips. In all these cases it appears indisputable that the service problems created by the described islands, strips and corridors clearly justified the prohibition. On the other hand, the creation of these irregular boundary lines was lawful at the time of their creation and necessary to permit annexation and extension of city services to territory seeking annexation.

As a result of these successive changes in the law, California cities now have large numbers of validly created pre-1951 islands, pre-1957-corridors and pre-1959 highway strips. The problems which prompted the Legislature to prohibit their creation in the future still plague the counties and cities in which they were validly created in the past. If it is the policy of the State that such islands, corridors and strips should not be created in the future, is it not a necessary corollary that those validly created in the past should be eliminated? They are either desirable or undesirable, and the policy decision having been made that they are undesirable, the next step should be taken by the enactment of legislation to facilitate their elimination.

Since their existence in most cases is the result of the unwillingness of an individual property owner to assume the responsibility for carrying his share of the cost of services and benefits of city government which his neighbors require and finance, and since the services and benefits of the surrounding city almost inevitably benefit the surrounded property, some dilution of the individual property protest rights is both necessary and justifiable.

- 2 *Cities with developed and populated unincorporated fringes should be authorized by legislation to submit the question of annexation to voters in the fringe thereby compelling the fringe to decide on becoming a part of the core city upon which they are economically independent.* Here again, some departure from accepted traditions of area initiation is believed justified. Either with or without the elimination or diminution of protest rights in the annexation of inhabited areas, there is no longer any reason why a city should not be able to initiate proceedings for the annexation of territory on its own motion without the time-consuming and costly requirement of a petition originated by electors within the territory. Such city initiation is presently authorized for annexation of uninhabited territory.

The principal objections which have been expressed to this proposal have been that cities would abuse the privilege of calling an election on annexation by gerrymandering the boundaries of each area proposed for annexation, and by calling elections so frequently that the voters would ultimately

be "worn down" and annex. It is believed that both of these objections can be met by making all boundary determinations subject to "review" as to their reasonableness by both the county and city planning commissions, and by imposing a time limitation on the calling of successive annexation elections.

- 3 *Legislative standards are needed to limit incorporations of communities within metropolitan areas to those having a recognizable separate identity and some degree of balanced development, and procedural advantages over incorporations should be given in such areas to annexations to adjoining cities of which they are economically and socially a part.* We indicated to this committee in July of 1958, that the special purpose city posed no serious problem, and that the purely residential, industrial and agricultural community was as much entitled to use of the incorporation privilege as the more balanced community. After further consideration of this problem, the League Board of Directors has revised this policy. It is now felt that in metropolitan areas a higher degree of balance and separate community identity should be required for incorporation as a city to prevent the incorporation of communities which are in fact part of an existing incorporated community. This can best be established by legislative standards for incorporation within metropolitan areas establishing higher population requirements and adding standards, to be applied by the board of supervisors, requiring some degree of separate community identity and a balanced development including more than one kind of land use.

In addition to the imposition of new standards, it is believed that legislation should be enacted which would give annexation proceedings in metropolitan areas an automatic priority if commenced within a specified period after the filing of a notice of intention to incorporate. This would give cities a right to require that citizens of their developed fringes express their decision on annexation before incorporation.

In addition to the foregoing, a number of other proposals for major changes within the framework of the existing annexation and related incorporation procedures have been made at previous hearings. It is believed that these merit comment. While these proposals have not as yet been acted upon specifically by the League Board, it is believed that they can be discussed on the basis of the League's general policy through the years of supporting legislation which will facilitate orderly annexations and opposing legislation which would impede such annexations. Among these are the following:

- (1) *Enforceable Inter-City Annexation Agreements.* One of the problems which was emphasized by a majority of those who testified at the Oakland and San Diego hearings was the need to find a way of ending the competition between cities. One proposal mentioned favorably by four witnesses which offers considerable hope is to give statutory authorization and enforceability to agreements be-

tween cities by which future areas of growth are described and each agrees to annex only within its own approved growth area. Such agreements would be subject to modification or amendment by the parties. There might also be a requirement of approval of a plan within an urban area by a county or regional planning commission as a condition of the validity of such agreements if the decision were limited to deciding to *which city* territory should be annexed rather than *whether* it should be annexed. This proposal was introduced by Assemblyman DeLotto as AB 2240 at the 1959 Session and was approved by the Committee on Municipal and County Government and the Assembly but died in the Senate Local Government Committee. While this proposal could not be expected to have any immediate effect it offers great promise as a means of ending inter-city strife, and substituting orderliness in annexation.

- (2) *Annexations Across County Boundary Lines.* The problem of urban development which is contiguous to a city and socially and economically a part of such city but prevented from becoming a part of it governmentally by a county boundary line occupied a considerable part of the committee's time at both hearings. To date the alternatives appear to be limited to a simplified procedure for the alteration of county boundary lines, or legislative authorization for a city to annex across county boundary lines. The former alternative would appear preferable to avoid the administrative problem of county services being rendered by two different county governments within a single city. If both boards of supervisors were willing and the territory involved were relatively small in area, it is difficult to see any substantial basis for opposition to alternations in county lines following an approving vote by the voters in the territory.
- (3) *The Provision of City Services on a Limited Basis to Newly Annexed Underdeveloped Areas by Utilization of an Incremental Tax Rate.* A thought frequently advanced as a means of meeting the objections of owners of undeveloped land to annexation and the full range of city property taxes is the use of an incremental property tax rate. For example, completely unimproved land could be annexed to a city, and the property tax for police and fire service, and other services not provided it could be deferred until it developed and required such services. The uniformity clause of the State Constitution probably precludes the use of this method of taxation as part of the general city ad valorem tax. Authorization for the formation of special service districts within cities by action of the city council or the electorate with the city council serving ex officio as the district board would probably survive the constitutional test. On the negative

side, use of this type of tax rate would pose many administrative problems, and the experience of the City of Riverside which originally incorporated with several thousand acres of agricultural land in its limits contradicts quite impressively the whole notion that undeveloped land within a city suffers from city taxation.

- (4) *Multiple Elections or Protests on Annexation and Incorporation* The frequent competition between cities for the annexation of territory, which may be further complicated by incorporation proposals involving all or a portion of the same territory suggests the possibility of a multiple election. This would provide the voters an opportunity to decide between all of the alternatives for municipal status or status quo. It would reduce the turmoil which now occurs in communities as the result of a continuing stream of proposals for annexations and incorporations. Assembly Bill 1905 introduced by Assemblyman Hegland in 1959 would have provided for such multiple elections. Meritorious as the bill's purposes were generally conceded to be, objective observers rather uniformly expressed the view that the administrative problems were almost insuperable, and even if the administrative problems could be solved, the ballot would be too complicated and confusing for the average voter.

An alternative method of accomplishing the same multiple choice was proposed at the Oakland hearing by City Attorney Harry C. Williams of West Covina. Under this proposal the multiple choice would be held at the protest stage, and the property owners within each of the proposal areas would express their choice by protesting or not protesting, and the one with the lowest protest would proceed to the next stage of election, or annexation ordinance if uninhabited. This would have the dual advantage of being easier to administer and cheaper than an election. As an alternative to the present race for exclusive jurisdiction this suggestion should be given very serious consideration.

As indicated at the beginning of this chapter, this second portion of the League's presentation does not necessarily reflect policy of the League but outlines a new approach.

C A New Approach. The preceding discussion is all based on the assumption that the basic annexation policies discussed at the beginning of this statement remain in effect, and the objective is to solve most of the problems without any substantial change in these policies. In their simplest essence the present policies governing annexation in California contemplate proceedings conducted by the annexing city under statutory procedures by the application of non-discretionary standards. The City conducts the proceeding and the Legislature prescribes exactly how and under what circumstances specific kinds of territory may be annexed.

In other words, contiguous uninhabited territory may be annexed if, following prescribed notice, there is no majority protest of assessed value of land and improvements. Inhabited territory annexations follow roughly the same procedure but there is a mandatory petition circulation before and an election after. The basic standards such as "uninhabited," "contiguity," and "majority protest" are defined specifically. Not one ounce of discretion is vested in the city. Incorporation proceedings are conducted by the county and are likewise nondiscretionary except for the establishment of boundaries.

During the committee hearings a frequently expressed hope was for a State or local agency with the authority to act as an impartial tribunal or umpire in deciding whether territory is suitable for annexation to a particular city or for separate incorporation, or should be served by a special district. This approach was considered by the League Board of Directors at its January 1960 meeting and was held over until a later meeting pending further staff study and report. The discussion which follows should, therefore, not be considered as a recommendation, but rather as a report and discussion of one approach to the problem which has been recommended to the committee by a number of city officials. In turn, this same report will be presented to the League Board when it meets in January of 1961 at which time it may be rejected, modified or approved.

A quasi-judicial tribunal or agency has the advantages of impartiality and objectivity which attach to the court and for this reason would be ideally constituted to apply discretionary standards. With a properly constituted agency applying discretionary standards to the determination of local governmental services and boundaries, most if not all of the annexation and related incorporation problems which have been presented to this committee and which flow so directly from California's existing annexation policies might disappear. The need for discretionary rather than nondiscretionary standards, possible discretionary standards for California, the composition and nature of an agency or agencies to administer the standards, the powers and functions which such an agency might be given, and some legal procedures under which such an agency might operate will be discussed below.

- 1 *Discretionary and Non-Discretionary Standards* The purpose of a "standard" is to provide a yardstick for deciding when a particular action should or should not be taken. Such a yardstick will necessarily be based on an objective representing the policy aims of those who formulate it. Once the aim or objective is established, the standards by which it is attained may be very general or very specific. The subject matter to which the standards are to be applied will normally determine the extent to which the standards may be specific. If it is susceptible of accurate measurement then they may be specific, otherwise, general standards are necessary. Specific standards can be applied with minimum use of a judgment factor which we term "discretion," and the validity of their

application can be tested. General standards necessarily imply the application of judgment. Existing annexation and incorporation statutes and special district acts are based on the application of specific non-discretionary standards, and, in the case of annexation, by the city seeking annexation.

2. *The Need for Discretionary Standards.* The aim or objective of annexation to a city government is generally considered to be that of providing municipal services and regulation to an urbanizing area which population density has reached a point at which a need for services and governmental protection arises. When this need occurs in an isolated community full municipal status is usually attained by incorporation. When this occurs on the edge of an existing city, annexation is the normal route for becoming municipal. In between rural status when no municipal services are needed and urban status when the full range of services is needed, there frequently occurs a condition when one or two services are needed but less than the full package of city services is needed. This transitional need is now met by district formation, county services, or early annexation. The determination of when the need for services has occurred, the extent of the need, the rapidity with which additional needs will arise and the best method for satisfying the needs in the future will necessarily depend on an extremely wide variety of physical, geographic, topographic, economic and social factors. These factors are practically impossible of accurate or specific measurement. The highest probability of a valid determination of these questions will be by the application of general discretionary standards by an experienced and impartial agency after a thorough investigation of all of the local facts.
3. *Possible Discretionary Standards for California.* Discretionary standards must necessarily be statutory and should establish in general and consistent terms the long range aims and objectives of the State in the provision of governmental services at the local level. This would supply the consistent scheme or state policy which is now missing. It could include a general statement that all urban areas and urbanizing areas should, when possible, be included in a general-purpose government below the county level; that areas adjacent to existing cities should annex; areas not adjacent to cities should incorporate if they meet the general requirements for incorporation, and if not should remain under county control, and all arrangements for municipal-type services should be under county control until the area becomes eligible for annexation or incorporation; no autonomous special districts should be formed in the absence of special circumstances and without the approval of the agency.

Standards for actions of the agency approving annexations and incorporation should be directed toward units with adequate area, population and value to constitute efficient and economically sound governments capable of financing and ad-

ministering adequate regulations and services without an excessive tax burden.

In addition, the legislation might very properly enumerate factors to be considered by the agency in considering proposed action on formations and boundary changes such as population, area, economy and development, assessed valuation, natural boundaries and drainage basins, growth prospects, existing and future services needs, present service levels, and effects of the proposed action on the area and adjacent areas, and the general structure of the metropolitan area.

- 4 *The Composition and Nature of the Agency* Throughout the committee hearings the witnesses advocated either a State agency or a county agency (frequently the county boundary commission) as the impartial umpire or tribunal. The large number of city officials who recommended a county agency as the proper agency for decision-making in connection with annexations is a tribute to the high degree of co-operation between county and city government in California at the present time. On the other hand, a number of witnesses expressed a strong preference for a State agency. However, because complete faith, confidence and co-operation does not yet exist between all counties and cities in the State, an alternative tribunal should be available to those few communities and cities who may not be fully confident of the complete impartiality of their county government. Besides the desirability of an alternative higher-level tribunal, a State agency would be in the best position to provide helpful research assistance and coordination to county agencies in the attainment of the State's policy objectives in the field. While the idea of a State agency having any degree of control over local boundary changes is abhorrent to those in local government, it should be remembered that annexations and incorporations are not a "municipal affair" and that the State agency here under consideration is judicial in concept, and judicial administration has historically been a state concern.

Thus, there could very well be both county and State agencies concurrently administering the discretionary standards, with the probability that, as the current trend toward county-city co-operation continues, the need for an alternative state agency would disappear.

5. *Powers and Functions of the Agency* The authority of the agency to implement state policy by the application of standards must be set forth by statute and should be accompanied by fairly detailed corollary legislation. The basic approach must, of course, be settled before there can be any useful consideration of specific agency powers and functions. The following three alternatives seem worthy of consideration.

- (a) *Existing Procedures—Agency Approval Added.* One alternative would be that of maintaining existing procedures for local boundary changes and merely adding a requirement of agency approval. This would give the

agency the final decision, but not the exclusive decision. It would not meet the need for simplifying and speeding up the existing procedures, and, in fact, would lengthen and unnecessarily complicate the procedures for boundary change.

It can be argued that the element of local consent has been the principal cause of the present situation, and that to perpetuate it would render attainment of an orderly and consistent state policy impossible. This does not necessarily follow. Local consent has resulted in the present situation largely because there has been a wide range of alternative courses of action available, and the *exclusive* decision has been made locally. Selection from among the large number of alternatives available has often not been guided by considerations such as those outlined above in the discussion of State standards. Thus, the availability of undesirable alternatives and not the element of local consent alone, has been the major cause of the existing conditions.

If agency approval were added to the existing requirement of local consent, the absence of alternative courses would help translate the need for services into local consent to the changes approved by the agency. The alternatives would be two: (1) no services (meaning no further development), or (2) services and development along the approved lines. The superimposition of agency approval on existing procedures would act as an indirect sanction compelling community consent by force of circumstances rather than by force of law. Similar indirect sanctions which would help to channel consent into agency-approved courses of action could be made applicable to local agencies, residents, developers, property owners, and others having local interests.

- (b) *Existing Procedures Modified and Agency Approval Added*. A middle ground would retain the essential features of the existing law and make affirmative changes, dependent upon community approval in addition to agency approval, but would dispense with many of the duplicate and complicated petition and protest requirements in the present law. For example, petition procedures could be eliminated entirely if an election were to be held in the community. Both election and protest provisions could be eliminated upon filing of a majority petition of owners or voters. This approach would reduce the time required to effect local boundary changes, with consequent economies in the costs of such changes to the locality.
- (c) *Elimination of Local Consent—Independent Agency Action*. The most drastic approach would be to vest in the agency plenary and exclusive power to effect compliance with the standards by direct agency action. This approach could produce results more rapidly, and perhaps more

completely, than the others. It would, however, require changes in California's Constitution, statutes and tradition. For example, the California Constitution, in Article XI, § 8½, Paragraph 7, now requires an election to be held in territory which is annexed to a city, as a condition of the assumption, by the territory, of the city's bonded indebtedness. Without some form of community consent, legally equivalent to an election, an agency could not now constitutionally compel unincorporated territory to assume bonded indebtedness. Some provision for assumption of bonded indebtedness would seem almost indispensable to fair application of the standards. An additional consideration of this approach would be the cost of the large staff which would be required to do an adequate job of administering the standards by direct agency action.

Under either of the three general approaches indicated, agency decisions concerning local governmental boundaries and services would be made after application of discretionary and non-discretionary standards. For purposes of this discussion these decisions will be called 'approvals.' The basic statutory powers which an agency would need, whether it be concerned as having merely the power to review or approve proposals or the power to compel action, would necessarily encompass the following:

- (a) *Review of Proposals.* As a community develops, the need for new or changed governmental regulations or services will inevitably result in a proposal for the provision of such controls or services. These proposals may take the form of boundary changes of existing cities or special districts, the creation of new county service areas, or the creation of new cities or districts. In other words, community development will trigger a demand for local governmental change. The principal and primary power of the agency would be that of reviewing proposals and applying the standards to such proposals. This specific power, to approve or deny proposals exercised pursuant to a procedure discussed below, would be the central function of the agency.
- (b) *Review of Future Plans for Local Governmental Services.* Since the purpose of the agency would be to attain ultimate statewide conformity with the State's policy for the provision of local services, and the agency would be assumed to have the necessary legal powers to attain such conformity, a premium would attach to advance planning for the local governmental structure required to serve and control future urban development in the various regions of the State. In other words, if the agency has the authority to prevent future non-conforming governmental structures, distinct advantages would flow from foreknowledge of the ultimate and approved governmental structure. It

would therefore seem highly desirable that the agency be vested with the specific authority to approve a plan for the future local governmental structure of an area, in advance of its urbanization and development. After this approval, review of subsequent local governmental changes within the area could be limited to ministerial investigation by agency staff to determine conformity to the overall plan for the government of the area. This power to review and approve a plan for future incorporations, annexations and other methods of providing needed services should, of course, be accompanied by an arrangement for necessary amendments to the general plan.

- (c) *Initiation of Plans and Proposals* The agency would have the power to review locally initiated proposals and plans, and might also be given the power to initiate its own proposals and plans, based upon available studies and evidence, and to issue orders for the accomplishment of such proposals. The method of enforcing such orders would depend on the general approach taken by the basic legislation. Most desirably the agency could outline and approve a course of action, subject to local consent. It could, conceivably, after due process, issue an order putting the action into effect.
 - (d) *Conditional Approvals.* The authority of the agency to review and approve proposals for local governmental powers and services within an area will be fully effective only if accompanied by the power to condition such approvals. If it is assumed that plans and proposals are submitted to the agency for review and approval, changes in such proposals or plans could be effected by amendment of the proposal by the proponents, by the imposition of conditions by the agency, or by direct amendment on the part of the agency. For example, if a proposal were presented for the incorporation of a large area as a new city, and if the agency found, after applying the standards, that one-third of the proposed territory should be annexed to an adjoining city, the agency should have the authority, either to exclude the territory in question, or to condition its approval of the proposed incorporation on the amendment of the boundaries to eliminate the territory. Another type of condition which might be needed would condition approval of annexation to a city upon the obtaining of legally adequate consent to assumption of the city's bonded indebtedness by the territory. This would be imposed as a means of attaining fiscal equity between residents of the city and of the annexed territory.
 - (e) *Rule Making* A grant of authority to promulgate rules and regulations, both interpretive and procedural, would be necessary for the effective exercise of agency powers.
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The accomplishment of the agency's stated objectives could be attained only if adequate companion legislation were enacted to assure compliance with the agency's general powers. Thus the review authority of the agency must be accompanied by other legislation which would give it "teeth." The following are legislative enactments of this type which should be considered:

- (a) *Freeze of Existing Authority for Changes in Local Government* The general approval authority of the agency would be completely useless unless adequate legislation were enacted prohibiting the creation of new cities, new districts, new district services, or new service areas, in the absence of agency approval, except in certain specific cases. It must be recognized that the agency legislation would be meaningless without a "freeze." But it will also be necessary to provide for certain exceptions to the freeze. The exceptions should be precisely defined, requiring only ministerial or non-discretionary review by the agency's staff in order to insure that qualification for an exception is present.

Specific Exceptions to Freeze:

- (1) Annexations of small parcels of substantially contiguous territory, or islands of territory, to existing service areas, districts, or cities
 - (2) Provision of services to areas of substantial size on a temporary basis, where necessary for immediate preservation of the public health and safety.
 - (3) Minor changes in boundaries in order to make assessment lines conform to ownership lines or service areas
- (b) *Interim Government in Urbanizing Areas.* Full implementation of a policy limiting the kinds and numbers of local governmental agencies providing local services will necessitate adequate provision for interim and limited services pending attainment of full municipal status. If the policy is to require that urban areas be provided with municipal services by city government and to prevent the creation of new single-purpose special districts, alternative methods of providing individual services must be made available to urbanizing communities. To the maximum extent possible these services should be provided by existing county and city agencies. While present legislation authorizes the establishment of county service areas, and the provision of services to fringe areas by cities acting under contract with a county or a district, there is a need for broadening the County Service Area Law and concept to encompass a wider range of services and to facilitate the serving of contiguous unincorporated areas by cities through county-city contracts. This suggests the possibility of legislation authorizing the formation of county service areas by joint action of county and city

governments, with the contiguous city providing the service. If a wide range of alternative methods were available for providing local services on a temporary basis, it would be possible for the agency to adopt and implement rules and regulations which would achieve the maximum efficiency and economy in pre-municipal services.

Thus, in the case of areas contiguous to a city and logically annexable, the agency could require that the limited services needed prior to the attainment of urban status be provided by the contiguous city, in order to avoid the creation of new positions in county employment on a temporary basis. This would facilitate the ultimate integration of the territory into the city. In the case of areas suitable only for eventual incorporation, the county would be the logical governmental agency to provide services on an interim basis prior to incorporation. In the event of incorporation, the new city could be required to take over those county employees who would continue to serve in the same jobs under the new city, unless the city should decide to contract with the county for the services.

6. *Procedures for the Exercise of Agency Functions* Precise agency procedures cannot be spelled out in detail, in the absence of specific descriptions of the agency and its powers. However, on the basis of general assumptions and analogy, a procedure can be "roughed out." Certain formal procedural steps are the norm for any agency exercising quasi-judicial functions in the application of discretionary and non-discretionary standards to individual factual situations. In general, these will constitute procedures for (1) the initiation of agency jurisdiction, (2) *factual investigation by committee staff*, (3) *notice of hearing* to interested parties, (4) formal hearing, (5) *agency action*, (6) *judicial review*, and (7) *enforcement of agency action*. From a procedural standpoint the California State Public Utilities Commission provides the closest analogy. Both agencies have quasi-judicial powers with respect to public services, and the areas and costs of such services. The procedures developed over the years by the Legislature and the Public Utilities Commission are relevant here.
- (a) *Prerequisites to Agency Action* Initiation of proceedings could be by *residents* of unincorporated territory, contiguous cities, or by the agency itself. It is assumed that where county or district government has an interest in the proceeding it would likewise be given the authority to initiate a proceeding before the agency.

In general, proceedings of the most comparable agencies are commenced by the filing of a petition or an application by interested parties. A petition to the agency suggested here should be required to include the date, the names of the petitioning parties, a description of the territory involved, a statement of the requested agency

action, and a statement of supporting facts and documentation. Frivolous and inadequate petitions could be discouraged by the requirement of a reasonable but substantial filing fee, and by the requirement that petitions be accepted for filing only if they contain the preliminary and basic data in the form required by agency rules. With detailed agency rules prescribing the materials necessary to accompany a petition, agency staff should be able to do an adequate job of determining when a petition should or should not be accepted for filing. In this connection, some thought might be given to the possibility of requiring a filing fee, measured by the assessed valuation, population, or the area of the territory involved. These fees might conceivably be sufficient to support the activities of the agency, or at least minimize the State's cost.

- (b) *Notice of Agency Investigation and Hearing* Following acceptance of a petition by the agency the date or dates for public hearing on the petition should be set within reasonable statutory limits and notice given to all interested parties in the area. The notice should contain information of the time, place, and purpose of the hearing and indicate generally the nature of the proceeding, and the conditions under which evidence will be received and witnesses heard.
- (c) *Independent Investigation by Agency Staff.* Immediately upon filing of the petition the agency staff should undertake an independent investigation, collecting all pertinent information. Adequate statutory authority would give agency and staff members access to all State and local public information for use in connection with with pending proceedings. The staff investigation should be consummated by the preparation of a staff report covering each of the salient elements of the statutory standards as they apply to the particular factual situation. In other words, the staff report should relate the facts, as found, to the statutory issues to be determined by the agency.

It is debatable whether or not the agency's staff report should make a definite recommendation for agency action. While the procedure would not be "adversary" in any true sense, there might be merit in maintaining full judicial independence by prohibiting advocacy by agency staff unless the proceeding is agency-initiated, in which event the agency staff would act as petitioners. In any event, with or without recommendation, the staff report should relate the facts found to the issues before the agency.

- (d) *Agency Hearing on Proposal* The staff report should be presented to the agency at the time set for the hearing. The petitioners would then present their case for favorable agency action as requested by their petition. Following the petitioners' presentation, other interested

parties who had taken the required steps to be placed on the agenda would be given an opportunity to present their evidence. The presiding officer of the agency should have adequate authority to control the scope of testimony by witnesses and limit the presentations to relevant factual data, or to arguments concerning the weight or relevancy of evidence presented in the staff report or the petitioners' presentation. Upon conclusion of the hearing the agency would take the matter under submission and, within a specified time, reach its decision.

- (e) *Agency Decision* Agency decision would take the form of an order approving the petition, disapproving it, approving it as amended, or approving it conditionally. If the proceeding were agency-initiated, the proceedings would be identical except that there would be no petition filed. The order of the agency should be supported by findings directed to each element of the statutory standards. In the aggregate, these findings would explain the basis of the agency's action pursuant to the discretionary standards. In some cases the findings would be specific with respect to the non-discretionary standards involved. For example, the findings could be specific on such non-discretionary matters as whether or not the area involved has a certain population, area, or population density. The findings with respect to discretionary standards would be supported by factual excerpts from the record of the hearing.
- (f) *Appeal and Review* After the expiration of a prescribed period of time following the service of the order on the petitioners and other parties to the proceeding, any party "aggrieved" by order would be given a right to petition the agency for reconsideration of the order. The agency would be given power to grant or deny reconsideration within a specified time. If reconsideration were granted, the agency could act to modify or change the order with or without additional hearings. If reconsideration were denied, or if a specified time should elapse without a request for reconsideration, the order would become final, and the final order would be issued to the parties. After the issuance of the final order an aggrieved party would be entitled to judicial review.
- (g) *Judicial Review* Judicial review should be limited to a determination of whether or not the agency order is supported by substantial evidence. If the agency is given authority to act directly and order changes, rather than merely to approve action by local agencies, it would be necessary to have judicial review of the action taken to determine whether or not it was within the scope of the statutory authority.

(h) *Action After Final Order*

If the agency merely approves proposals, and action is to be subsequently taken locally after approval, the specific proceeding would be complete upon the agency's approval becoming final. The local agency on petitioning individuals would then proceed in accordance with other statutory procedures to effect the approved change in local government. These actions would, of course, be subject to judicial review as at present. Property owners could challenge the agency in the courts for a failure to follow statutory procedures. In addition, it might be desirable to authorize the agency to test the propriety of local action by court action if there were cause to believe that any local actions were contrary to statute, or contrary to the terms of agency approval.

In conclusion, I wish to take this opportunity of extending to the committee the continuing appreciation of the League of California Cities for the many contributions which this committee has made in the past to local government, for the thorough going investigations which you have made in this field, and others, during the interim period now nearing its end, and finally, for the constructive and sound legislative action which you will recommend to the Legislature when it convenes in January of 1961.

CHAPTER VI

THE GOVERNOR'S COMMISSION ON METROPOLITAN AREA PROBLEMS

APPROACH TO THE PROBLEM

This part of the report dealing with the Governor's Commission's approach to the problems of annexation and incorporation is broken down into two parts. The first part contains the presentation by Philip Simpson, Executive Secretary of the Commission, before the Committee at its final hearing in November, 1960. This presentation outlines briefly the background of the Commission and then it summarizes some of the outstanding findings of several studies prepared at the request of the Commission on the subject of local boundary changes. Mr. Simpson's presentation only summarized the ideas presented before the Commission and did not represent Commission policy because its findings and recommendations were not prepared in final form as of the November date and a report had not been submitted to the Governor.

However, the second part of this chapter contains the final findings and recommendations of the Commission in summarized form as they were adopted at the Commission meeting in Los Angeles, December 3, 1960. These findings and recommendations were extracted from the Commission's report to the Governor which was presented to him on December 17, 1960, and are included here for the main purpose of rounding out this report, thus giving the reader a broad scope of possible legislative recommendations that might be introduced during the 1961 General Session by the Governor's Office on this subject.

A. PRESENTATION OF PHILIP SIMPSON, EXECUTIVE SECRETARY OF THE COMMISSION

At the request of Mr. Clark Bradley and the members of the Assembly Interim Committee on Municipal and County Government, I would like to submit the following statement concerning the activities of the Governor's Commission on Metropolitan Area Problems with regard to the area of municipal annexation and incorporation.

So that my remarks may be placed in proper context, I would like to state the purpose for which the Commission was established by Governor Brown, the part that the subject of annexation and incorporation plays within this purpose, and the intended scope of this presentation today.

The Governor's Commission on Metropolitan Area Problems was established in March 1959, to advise the Governor concerning the role of State Government in metropolitan affairs, and specifically to determine whether new State policies and programs are necessary to assist local units of government in solving metropolitan problems.

In the Committee's assessment of current metropolitan problems, it soon became apparent that among the most prominent were those concerning annexation and incorporation. Clearly, the development of an approach to metropolitan problem-solving must include the study of present annexation and incorporation practices and procedures, as well as recommendations for necessary improvements. Today I wish to emphasize primarily that the Commission's investigation of annexation and incorporation is only part of its broader purpose.

My purpose here today is to present before this Committee some of the outstanding findings of several studies prepared at the request of the Governor's Commission on Metropolitan Area Problems on the subject of local boundary changes. Those studies were among a number of "background" or study papers that were prepared by experts in the field of intergovernmental relations on various aspects of metropolitan growth and development.

Papers were prepared for the Commission by such experts as John Bollens, Director of Urban Studies, Bureau of Governmental Research, U C L A ; Winston Crouch, Director, Bureau of Governmental Research, U C L A , Stan Scott, Assistant Director, Bureau of Public Administration, University of California, Berkeley, Lew Keller, League of California Cities, Paul Ylvisaker, Associate Program Director, Public Affairs Division, Ford Foundation; Frank Sherwood, Associate Professor of Public Administration, University of Southern California, and several others.

Unfortunately, these background papers are presently out of print, but demand for these papers has been so great that they are now being compiled in edited form for publication as a companion document to the Commission's report to the Governor.

The Commission's initial report to the Governor is now being drafted for presentation to the Governor early in December, the full report is to be published for distribution early in the 1961 session of the Legislature. Because the Commission's findings and recommendations are not yet prepared in final form and a report has not been submitted to the Governor, my comments today should not be interpreted as committing the members of the Commission in any way. I am here summarizing the ideas presented before the Commission; this summary does not represent the Commission policy.

(a) *Proposals for Improved Local Boundary Change Policies and Practices as Presented to the Governor's Commission on Metropolitan Problems.*

Since your Committee on Municipal and County Government has been studying the local boundary problem in depth for many years, there is little need to reiterate the problems generated and compounded by present annexation and incorporation practices. Instead, I shall proceed directly to a discussion of the various proposals for local boundary rationalization presented to the Commission.

General Proposals

Several proposals have been advanced which are intended to resolve difficulties in annexation and incorporation.

1. **State policy**—Adoption by the State Legislature of a consistent and strong State policy for the provision of governmental services at the local level is a basic proposal contained in a majority of the papers. The State could, for example, call for the establishment of municipal government in all areas which are now urbanized or where urbanization is imminent. The area could be annexed, if it were adjacent to a city, or, if not closely related to an adjacent city, it could be incorporated.
2. **Revision in existing laws**—A widely supported proposal concerns revision and recodification of the existing laws governing annexation and incorporation. Much of the blame for present patterns of local boundaries is said to result from the confusing, complicated, and sometimes contradictory provisions in the present laws.
3. **Establishment of standards or criteria for local boundary change**—Since decisions to incorporate or annex are often made in the absence of a comprehensive and impartial investigation of local problem needs, several studies have proposed that statutory criteria be established to guide local units in their considerations for boundary changes. Present criteria for incorporation are minimal, none—or virtually none—exist in the case of annexation.
4. **A State Board to review local boundary changes**—Also presented in several of the papers is the idea of establishing a permanent review board at the State level to consider all proposals for annexation and incorporation, as well as for the consolidation and the formation of special districts. It is felt that this review board could be guided by legislative standards, such as those referred to in the previous section, and could be given power to approve or disapprove the proposals brought before it.

Specific Proposals

Several specific proposals have also been made with reference to annexation or incorporation.

ANNEXATION

1. **City initiation of inhabited annexations**—One proposal would allow the cities to initiate proceedings for the annexation of inhabited territory on their own motion. By this means a city could submit the question of annexation to voters in unincorporated fringe areas, thereby compelling their inhabitants to decide on becoming a part of the core city upon which they are economically dependent.
2. **Clean up odd boundary configurations**—Considering it as important to eliminate odd configurations created in the past as it is to prevent their creation in the future, proposals are suggested for legislation authorizing the annexation of legally created islands, corridors and strips to their surrounding city upon a finding by both the city council of the surrounding city and the board of supervisors of the county that the property within such islands, corridors and strips can be more economically served and will benefit from municipal services provided by the city.
3. **Extra territorial controls**—A most desirable incentive to municipal annexation would be for counties and cities to voluntarily develop

and adopt common standards for land use controls applicable to urban development in the unincorporated urban fringes. It was pointed out that this is under consideration in many areas of the State at the present time. A notable example is the County of Fresno where substantial progress has been made toward joint county and city planning and zoning controls, as well as building and subdivision regulation.

4. **Method of adopting inhabited annexation proposals**—The proposal has been made that legislation be enacted to provide for the submission of inhabited annexation proposals to the electorate of both annexing city and the area to be annexed with the issue to be decided by a majority of the combined vote. Such annexation proposals are now voted upon only in the area to be annexed. Under this present method, unincorporated area voters in an area proposed for annexation, representing in most cases a minority of the city and unincorporated area combined, may effectively block or veto a beneficial annexation. It is contended that this proposal would help correct that situation and at the same time would not deprive any community or its voters of a voice in the decision-making process.

INCORPORATION

1. **Defensive incorporation**—To help remedy the present practice of defensive incorporations, the proposal is offered that, in the absence of new standards for the incorporation of future cities in metropolitan areas, a mandatory period of "open jurisdiction" of one year be established between periods of exclusive jurisdiction; and that provision be made for the automatic priority of an annexation proceeding commenced within ten days after the filing of a notice of intention to incorporate.
2. **Discretionary criteria**—In expanding upon the need for more useful statutory criteria in the preparation and consideration of municipal incorporation several criteria have been proposed. For example, a city should be incorporated if it meets these general requirements:
 - a. It is an area which is not adjacent to an existing city and the probable development of this area will not in the foreseeable future bring it into proximity to a city
 - b. Such incorporation will not substantially hinder the present or future solution of governmental problems affecting the area
 - c. The area upon incorporation would have sufficient area, population, and assessed valuation to constitute: (1) an effective agency of local self-government, (2) an adequate unit for the efficient and economic provision of local services, and (3) a physically competent governmental unit capable of financing an adequate level of service without placing an excessive burden on the taxpayers or requiring undue reliance on outside subsidies

Local Boundary Change Review Board

This last item, concerning the establishment of certain standards or criteria, and, indeed, the entire problem area of municipal annexation and incorporation serves to emphasize a subject which I would like to comment briefly upon in my concluding remarks. This is the subject of

the establishment of a State board to review local boundary changes, a topic which has received much discussion by the Commission.

The basis for Commission discussion has been provided by one background paper in particular—prepared by Stanley Scott, Lewis Keller, and John Bollens, it is titled "Local Governmental Boundaries and Areas: New Policies for California."

This paper, after pointing out the need for a State local boundary change review board, (1) suggests some standards and criteria which might guide such an agency, (2) presents alternatives with respect to the composition and location of such an agency, (3) outlines the agency's possible powers and functions, and (4) reviews the legal procedures under which the agency might operate. While these topic areas are covered in the paper, no definitive conclusions are advanced but, appropriately, various alternatives are presented. For example, if it were desired to draft a "model" review board from the alternatives presented, the agency could take the following form. It could be a quasi-judicial commission of five members appointed by the Governor, be attached to the Governor's Office, and provided with adequate staff. The commission might meet as necessary in various locations throughout the State and would have the power to approve, modify or disapprove proposals for the creation or change of local governmental boundaries on the basis of established criteria. Such an agency would need to operate under specific procedures which provide for (1) the initiation of agency jurisdiction, (2) investigation by agency staff, (3) notice of hearing to interested parties, (4) formal hearing, (5) agency action, (6) judicial review, and (7) enforcement of agency action.

To indicate examples of local boundary change review agencies and to provide precedent for the various alternatives proposed, the Scott-Keller-Bollens paper contains an appendix summarizing the local boundary and area policies as practiced in eight selected jurisdictions including five American States, a Canadian province, and the national governments of England and New Zealand. A summary of this material is appended to this presentation for your review.

In conclusion, and in behalf of the Chairman of the Governor's Commission on Metropolitan Problems, Mr. Roy Sorenson, I would like to thank Chairman Bradley and the members of this Committee for providing this opportunity to discuss the proposals presented to the Commission in the area of annexation and incorporation and to share these ideas with you.

B. FINDINGS AND RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION

As stated earlier in this chapter, the findings and recommendations are extracted from the report of the Commission to the Governor dated December 17, 1960.

Commission Findings

Circumstances have changed drastically since the time when all the needs of the population could be met by a city or county government. Today, nowhere does the jurisdiction of local units of government correspond to the social, economic, and political realities of the metropolitan community.

California Yesterday

In 1850, when California entered the Union, less than 200,000 people lived in the State. Only eight percent of this population could be classified as "urban." Our economy was based entirely on agriculture and mineral production. By 1879, when our present State constitution was adopted, there were only 59 incorporated cities, and only 43 percent of the 865,000 people living in the State were classified urban by the U.S. Census Bureau. Fifty years later, in 1930, 76 percent of the State's population, or 4.3 million people, were living in four metropolitan areas. All but 18 percent of the population within these metropolitan areas was living within an incorporated city. By 1950, 82 percent of the 10.5 million population lived in six metropolitan areas and 28 percent, or three times as many people as in 1930, were *not* included within a municipal government.

California Today

California today has 15½ million people. Almost 14 million, or close to 90 percent of this population, live in one or another of nine metropolitan areas. The number of cities has increased to 368, but in spite of this a tremendous number of the people living in metropolitan areas do not live within incorporated boundaries. The metropolitan community—millions of people and their daily living activities—has expanded beyond municipal boundaries and, in several cases, has crossed county boundaries. Half of the metropolitan communities in the State include two or more counties. In short, there now exist areawide complexes with areawide problems and needs which are beyond the capacity of one or a few local units of government to solve.

These areawide problems are acute and are mounting with population increase. It is currently estimated that California's population increases by 1500 people a day. Each year we add half a million people. At this rate of increase, and according to the preliminary 1960 census figures, California will meet and exceed New York State as the most populous State in the nation by 1962. In common with national trends, nearly 85 percent of this growth occurs in metropolitan areas. By 1980, California will have an estimated 30 million persons, about 28 million of these people will live in one metropolitan area or another. Thus while California has been experiencing phenomenal growth, most of its growth is yet to come.

Commission Recommendations

Since close to 90 percent of California's population is now living in metropolitan areas, it is self-evident that metropolitan area problems are statewide problems and that the State has a vital concern in their solution. Today, the first and most urgent requirement for the eventual solution of metropolitan problems is vigorous and continuing leadership at the State level. Such leadership must come from the Governor as the single individual who can speak for all the citizens of the State. He must stand above local and sectional interests and he must speak out on metropolitan matters, frequently and in specifics. In short, he must focus attention upon metropolitan problems and must constantly use the power and influence of his office to persuade local government units, proud and independent though they may be, to work together to meet specific problems.

President-elect Kennedy has proposed a federal level Department of Urban Affairs. However, nowhere has responsibility for the metropolitan problem been taken over even at the State government level. The State Government of California should assume a substantial degree of such responsibility and not wait for the Federal Government to take over leadership in this field.

The public must be informed. The general lack of knowledge with regard to the impact of metropolitan growth is itself a metropolitan problem which must be met before concerted steps can be taken. In the solution of other areawide problems that may exist in any metropolitan community, the majority of the metropolitan community must be aroused to the point of supporting remedial action.

It is in this area of public information that the press—daily newspapers and periodicals—can once again perform a vital service in the public interest. The press, along with radio and television, is a powerful force for the dissemination of ideas and information and in the formation of public opinion and must be marshalled in support of these new, mid-20th Century objectives.

This responsibility for informing and for generating reaction to information does not rest with the press alone, it belongs to every member of the metropolitan community. Many decisions regarding metropolitan affairs will have a vital effect upon private employment and private investment. It is incumbent upon local business leaders to participate with local officials and other groups in establishing goals and guiding metropolitan growth. The need of the metropolitan citizen for factual information and for an understanding of that information, as well as the need of local government officials for informed opinion and reaction to their present and planned governmental actions reaffirms the role of local civic groups such as the League of Women Voters.

In short, some very real and critical problems arising from metropolitan growth in California are threatening the continued social, physical, and economic well being of this State and its citizens. Where these problems exist people are groping for appropriate solutions. Solution of these problems, however, requires more than the uncoordinated though dedicated efforts of the many civic and official organizations and agencies concerned. What is most urgently needed today is broad citizen understanding and leadership—leadership as great as our problem.

What should be done now?

Proposed for Immediate Action

Metropolitan growth must be directed to the conservation and economic utilization and enhancement of the State's resources and to the provision of a suitable environment for the people of California. At the same time, proposals for solution of California's metropolitan problems should be designed to maintain as much of the political decision making as possible in the local community. Local citizens must continue to be provided with the opportunity to make choices about the structure and programs of their local government. The recommendations which follow call for the support and strengthening of local government in California so that it may solve successfully the emerging and changing problems of population growth now facing its citizens. To do this

we recommend that the Governor take appropriate action to achieve the following:

- (1) Improve, simplify, and rationalize the structural relationships of existing and future local government units (The Commission's recommendations do not include or relate to school districts)

- a Discretionary criteria should be developed and enacted into law to serve as a guide in the establishment and alteration of local units of government

Since urban and urbanizing communities throughout the State vary from one another as a matter of physical, social, and economic conditions, standards or criteria need to be developed to guide the organization and alteration of local units of government. These criteria would need to be general and flexible, allowing a significant area of discretion to the communities considering such an action or to an agency administering the standards.

- b Annexation laws should be amended to provide that California cities may initiate proceedings for the annexation of inhabited territory on their own motion

Such city initiation is presently authorized for the annexation of uninhabited territory, while, in the case of inhabited fringe areas, the central city is required by present law to petition of the residents of the area to be annexed. This recommendation would allow cities to originate a proposal for the annexation of inhabited areas in the interest of orderly and efficient extension of municipal services, as well as to exercise municipal control over the developing fringe areas which are, physically and economically, a part of the central city. Provisions should be included in the revised legislation that proposals for city initiated annexation be reviewed by an appropriate official agency not an interested party to the annexation and that there be a reasonable time period established after which a defeated annexation proposal may be resubmitted. These provisions would prevent gerrymandering and other conceivable abuses.

- c. Annexation laws should be amended to provide that proposed annexations be submitted to the electorate of both the annexing city and the area to be annexed with adoption of the proposal to be decided by a majority vote of those voting on the proposal.

Such annexation proposals are now voted upon only in the area to be annexed. Under this present method, voters in the unincorporated area proposed for annexation, representing in most cases a minority of the city and unincorporated area combined, may effectively block or veto a beneficial annexation. It is intended that this proposal would help correct that situation and at the same time would not deprive any community or its voters of a voice in the decision making process.

There are potential practical difficulties which may arise in the application of this recommendation. For example, if it were proposed that an area including, say, 250 residents to be annexed to the City of Los Angeles, it would be extremely costly to the City of Los Angeles just to hold the

election. Such practical difficulties are recognized. They do not invalidate the principle but emphasize the need for ingenuity in the development of the mechanics and provisions of the recommended statute to reduce the possibility of impractical application.

- d Analysis, necessary revision, and recodification should be undertaken of all present legal provisions affecting the creation or alteration of local units of government.

Present law for annexation, incorporation, and the formation of special districts has not sufficiently provided for the orderly development of local government structure. The law has permitted annexations and incorporations which should not have occurred. It has made possible the blocking of other incorporation and annexation proposals which possibly should have gone through. Such ambiguous results, to a great degree, are attributable to the confusing and often conflicting provisions of the existing legislation.

Such analysis, revision and recodification should be performed on a continuing basis. The periodic addition, insertion, and amendment of the present law is largely the cause for their present confusing condition. More than 250 amendments have been made to the annexation sections of the Government Code in the ten years ending 1959.

- (2) Permit the establishment by metropolitan areas of an areawide governmental framework through which truly areawide matters can be presented, discussed, decided, and acted upon on an areawide basis, as follows:

- a Enact enabling legislation permitting the establishment of a metropolitan area multipurpose district by a majority vote of the voting electorate within a defined metropolitan area, said district to be governed by a metropolitan council to be selected by and from the membership of the governing bodies of the cities and counties within a proposed metropolitan area multipurpose district. The enabling legislation should grant these districts taxing and bonding powers.

- b The enabling legislation recommended above should further provide that those functions permitted to be performed by any metropolitan area multipurpose district on an areawide basis *must include comprehensive metropolitan planning and one or more metropolitan functions such as*:

- 1 air pollution control
- 2 metropolitan water supply
- 3 metropolitan sewage disposal and drainage
- 4 metropolitan transportation, terminals and related facilities
- 5 metropolitan parks and parkways
- 6 metropolitan law enforcement
- 7 metropolitan fire protection
- 8 urban renewal
- 9 civil defense

- 10 any other metropolitan areawide functions which may be requested by the respective metropolitan areas. The number and nature of the metropolitan functions originally

- included in the formation of a metropolitan area multi-purpose district will differ in each area
 - c At any time subsequent to the establishment of such a metropolitan district, additional functions may, by a majority vote of its electorate, be added to its powers and no new and separate districts to perform government functions for substantially all of such metropolitan area shall be formed
 - d The enabling legislation should also include the provision that each metropolitan area in the State should submit to its electorate a proposal for a metropolitan governmental structure as soon as possible, and must submit such a proposal by January 1964
 - e The Commission recognizes that as a metropolitan area multi-purpose district is given an increasing number of functions it may be desirable to have some or all of the members of the metropolitan council chosen directly by the electorate if necessary in order to broaden representation by a cross section of groups in the metropolitan area, therefore, the enabling legislation should provide that the question of direct election shall be submitted to the electorate each five years after such a district is established
- (3) Establish by statute a State Metropolitan Areas Commission to be appointed by the Governor and charged with the following duties
- a To exercise quasi-judicial powers in the review and approval of proposals for the incorporation of or annexations to cities, and for the creation of, annexations to, consolidations of, or dissolution of special districts;
 - b To study and make recommendations concerning State laws affecting boundary changes of local units of government,
 - c To inform, advise, and assist the Governor concerning the present and changing problems and needs of existing metropolitan areas in the State and the general problems of metropolitan government, recommend policies and action for the treatment of these problems;
 - d To identify and delineate for the purpose of metropolitan area multi-purpose districts metropolitan areas in the State on the basis of specified criteria,
 - e To initiate and submit for voter approval proposals for the consolidation of cities as well as for the creation of, annexations to, consolidation of, or dissolution of special districts, after appropriate study and the finding of need,
 - f To assist and encourage metropolitan areas in the initiation and undertaking of studies directed toward the development of a metropolitan government for the specific metropolitan area, if by January 1, 1963, the metropolitan area has not already done so,
 - g Prepare for a vote of the electorate a proposal for a federated form of metropolitan government for those specific metropolitan areas which by January 1, 1964 have not produced such a plan and submitted it to their voters, and, in the event such a proposal is voted down, to require that a proposal for a federated form of metropolitan government be submitted not later than five years after each such unfavorable vote

CHAPTER VII

THE ATTORNEY GENERAL'S APPROACH TO THE PROBLEM

The Office of the Attorney General of California was invited to present its viewpoint on the annexation and related incorporation problems and to offer suggestions for possible legislative revisions. Mr. Eugene B. Jacobs, Deputy Attorney General, appeared before the Committee in May of 1960 at the Oakland hearings and made the presentation on behalf of the Attorney General. Their viewpoints and possible solutions are included in this report, along with those of the League of Cities, the Supervisors Association, and the Governor's Commission since the Attorney General is in a very different situation and views this matter in a different light than other State, city or county officials. This was brought out by the following introductory remarks of Mr. Jacobs:

My presentation, I think, will be slightly different from those which have been presented before. Our office, as you may know, has charge of the quo warranto actions, the only way an annexation or incorporation can be stopped after it is completed. We have dealt with practically all of the really "sick" annexations ever since the State started incorporations, and particularly in the last five years we have had to deal with virtually every annexation that has had a great deal of fervor and problems concerned with it. My presentation, for example, deals primarily with the technical problems of annexation and the Act as we now find it today and what we feel should be done to it as it now stands in order to improve it. I don't believe any of our suggestions would in one way or another have much to do with the policy of whether annexation ought to be encouraged or not encouraged, ours is primarily a technical job on what we feel are the problems of the present day Act.

Mr. Jacobs' complete presentation is contained here with the exception of the first two sections containing the introduction and the constitutional and statutory provisions on annexation and incorporation

Cities in California annex territory pursuant to the following code sections:

<i>Government Code</i>	
General provisions	Secs. 35000-35011
Annexation Act of 1913 commonly known as the	
Inhabited Annexation Act.....	Secs. 35100-35158
Annexation of territory owned by annexing city or a	
contiguous school district.....	Secs. 35200-35213
Annexation of territory of an adjacent city.....	Secs. 35250-35260
Annexation of Uninhabited Territory Act of 1939, com-	
monly referred to as the Uninhabited Annexation Act.....	Secs. 35300-35326

Government Code

Annexation of County Highways to Cities by Boards of Supervisors	Secs 35450-35458
Annexation of Territory Owned by the Federal Government	Secs 35470-35471
Minor Corrections and Relocations of City Boundaries	Secs. 50190-50200
<i>Education Code</i>	
School District, status of territory annexed by cities	Secs. 1271- 1722
<i>Code of Civil Procedure</i>	
Statute of limitations for attack on city annexations	Sec 349½

The annexation provisions were enacted pursuant to short provisions in the California Constitution. (Art XI, Secs. 6; 7½; and 8½, subdivisions 6 and 7, See *People v City of Los Angeles*, 154 Cal 220, 225)

UNIQUE RELATIONSHIP OF THE ATTORNEY GENERAL TO CITY ANNEXATIONS AND INCORPORATIONS

Pursuant to Sections 803 et seq of the Code of Civil Procedure the Attorney General is charged with filing quo warranto actions when in his opinion a corporation usurps, intrudes into, or unlawfully holds or exercises any franchise within the State. The greatest number of these quo warranto actions involve the validity of annexations and incorporations of cities. A complete description of the present practice of the Attorney General in quo warranto is set forth in a document attached hereto, entitled "Present Practice in Quo Warranto in California."

This relationship of the Attorney General to city annexations and incorporations is unique and has been instructive in understanding the annexation and incorporation problems which exist today in California. The practices of the cities and the troublesome provisions of the statutes have been highlighted in the applications for leave to sue in quo warranto which have been filed with the Attorney General.

It should be clearly understood that the Attorney General is not here expressing any opinion as to whether it should be easier or more difficult to incorporate. Whether a few large cities are more desirable than many small cities is not our concern here. Our experience, however, indicates that some cities have been unfair to landowners, residents, and voters, and that great public expense has been caused by unnecessary litigation involving many public entities such as cities, counties, districts, and the Attorney General's Office. The present statutory procedures are overly complex, misleading, and productive of misunderstanding the litigation.

The dilemma faced by the Attorney General was clearly stated in 23 Ops Cal Atty Gen 300, 304:

"The Attorney General has a grave responsibility in acting on a request to sue in quo warranto. He must weigh his decision carefully since by his action he may cause extensive litigation which will impede the growth and expansion of California cities. He must also weigh the rights of individual citizens whose property rights might be prejudiced by over zealous cities desiring to expand their city limits."

CRITICISMS OF PRESENT ANNEXATION AND INCORPORATION PRACTICES AND STATUTES

A. *Permitting City Councils to Sit as Judge, Fact Finder, and Administrator in Annexation Proceedings is Unwise and Ill Advised.*

In our opinion the most serious defect in the present annexation statutes is the fact that the entity conducting the procedure and making the crucial determinations as judge, fact finder, and administrator is a party in most instances desirous of completing an annexation—the city council of the city to which the territory is to be added. Over-aggressiveness is thus encouraged in cities. The annexation statutes make the city council of the annexing city the judge, jury, and administrator of the proceedings. Competing cities, citizens, residents, property owners, and voters many times have been helpless to protect themselves without resort to litigation. Many cities in their zeal have been prone to ignore statutory limitations. The greater familiarity of the cities, their officers, and their employees with annexation procedures has placed private persons at a disadvantage unless sufficient legal fees are expended for an attorney equally trained in these matters.

While most annexations go smoothly and most cities are fair, there have been an inordinate number of annexations where the cities have been prone to decide all doubts in their own favor. In two recent cases the courts have warned the cities about their responsibilities in this regard.

In *Hubbell v City of Los Angeles*, 142 Cal App 2d 1, 5 and 6, the Court said

“It requires no citation of authority in support of the proposition that the governing bodies of municipalities stand in a different and higher category than mere employees and directors of a private corporation. Whatever other functions they may be called upon to perform, members of a municipal council or other public body are at all times trustees of the public welfare. Obviously, such a trusteeship does not call for competition and strife between such bodies and the interested members of the public; nor between the bodies of neighboring municipalities. These salutary precepts do not appear to have been recognized or followed in the attempted annexation. (p. 5)

“Obviously the annexation statutes never contemplated a situation in which two municipalities would enter a bitter contest to see which could deprive the other of a desired parcel.” (p. 6)

Heller v City Council, 157 Cal App 2d 411, 449, 450, stated

“In our opinion the Legislature carefully designed a procedure whereby the rights of private property owners and the public are protected in their right to protest annexation proceedings. Cities have been given great powers in the matter of annexations and with that power goes an equal responsibility to see to it that the power is not abused. It is of considerable importance to many land-owners whether they be in a city or out of a city, and the utmost fair plan by city authorities is called for.”

B. *The Annexation and Incorporation Statutes as Now Constituted Contain Only Formal Procedural Requirements and Limitations, and are Utterly Devoid of Substantive Standards to Guide the City Councils*

As has been pointed out many times by the courts, annexations and incorporations will not be invalidated so long as cities have followed the formal, procedural, technical requirements of the statutes. No matter how devoid of municipal purpose an annexation may be, it apparently will be approved by the courts unless there has been an important procedural failure, or unless fraud, subterfuge, or evasion is involved. No standards have been established by the Legislature to limit annexations and incorporations to those with particular public purposes. No standards exist to decide whether particular territory should be in one city or another, or in no city. *People v. City of Palm Springs*, 51 Cal 2d 39, is an example of the hands-off attitude of the courts because of the lack of legislative guidance. *City of Burlingame v. County of San Mateo*, 90 Cal App 2d 705 is an even better example. There the city annexed a 100 foot wide strip in the form of a horseshoe, for the sole purpose of protecting the property inside the strip from annexation by a neighboring city.

It should be noted that incorporated territory need not be urban. Many cities have added territory or have been created for non-urban purposes. There would seem to be nothing improper with that practice, but at least the adding of territory by an annexation should be for a public purpose. Strip annexations, as such, also would not seem to be improper as a matter of policy. In many instances strip annexations are necessary to enable people who desire to be in a city to gain that status and to permit people desiring to remain unincorporated to also have their wish.

Many annexations, however, are accomplished contrary to the spirit of fair play and without a governmental or public purpose. Nothing exists in the annexation acts today to preclude annexations which have no valid public purpose so long as an annexation conforms to the letter of the statutes.

C. *The Inflexibility of the Annexation and Incorporation Statutes Creates Jurisdictional Disputes Between and Among Cities and Incipient Cities.*

Many annexations and incorporations of cities today resemble an Oklahoma land grab or a rush to the recorder's office more than they are comparable to a process providing an orderly and rational change of governmental jurisdiction. The city which is first to take certain procedural steps, immunizes the territory from annexation procedures of other cities, and from incorporation steps by persons proposing new cities. Thus a city which first acquires jurisdiction, even invalidly, can continue control until a court, months or even years later, declares the annexation void. In the interim other cities, residents or property owners, are helpless to start other incorporation or annexation proceedings even if municipal needs and desires indicate the city with jurisdiction provides the least desirable alternative. Surprisingly, the city with jurisdiction can institute and complete a second, a third, a fourth, or an unlimited number of additional annexations involving the same territory even while the first one is still pending. Ultimately

even if the first annexation is void or voidable, the second or third attempt may become valid.

The inflexibility of the present statutes is such that the courts may not make orders changing the boundaries of the territory to be annexed even if they seem desirable and appropriate to the court. It is an all or nothing situation. The annexation is either entirely in or entirely out of a city. No careful result can be designed by a court without complex de-annexation or annexation procedures by the cities involved. Regions and territories as a whole are rarely considered in annexations under the present law.

The cities in many areas in this State are reaching much as independent principalities, like two large countries in Europe seeking the territory of some small nation located between them. Cities seek to extend their jurisdiction by annexations, rather than through aggressive war, but unfortunately the territory involved always has been unincorporated, often contrary to the wishes of a large segment of the territory to be annexed. Sometimes the opposition is a majority which mobilizes too late because they trusted the city and did not consult an attorney.

D. The Annexation Statutes are Badly in Need of An Overhaul Even if No Dramatic Change is Made in the Procedure.

In our opinion the criticisms set forth above are fundamental. In addition, many other less important but troublesome weaknesses appear in the annexation statutes. Like many statutes, the annexation laws for many years have been amended to solve particular problems but with little consideration for the overall statute or other problems. In our opinion the annexation statutes should be completely rewritten even if few fundamental substantive changes are made.

1. Sections 35120-35121 and 35313-35313.1 Relating to the Rights of Protesting Property Owners are Confusing, Incomplete, and Inconsistent

The protest provisions of the Inhabited Annexation Act are not the same as the sections in the Uninhabited Annexation Act. It is difficult to see any reason for the differences and confusion would be destroyed by closer uniformity.

Sections 35120 and 35312 define the owners who may file protests to annexations and limit filings of protests to persons who are shown as owners on the last equalized assessment roll. However, Sections 35121 and 35313 talk of protests by entities sometimes not shown on the assessment roll, that is, public owners. While this inconsistency is generally ignored in practice, it is a possible source of argument in litigation.

Sections 35121 and 35313 seem to assume that as a matter of fact the only property not shown with value on the assessment roll is publicly owned property. From those sections it would appear that any private property exempt from property taxation pursuant to such a result is intended but the wording of the sections would seem to indicate that the problem was not even considered. Moreover, discussions with persons familiar with the annexation statutes seem surprised that this is a possible result.

No standards are provided in Sections 35121 and 35313 for the determination of the value of public property. Is valuation to be estab-

lished as it is on the property tax assessment rolls, or is market value to be determined? If market value, then is it fair to balance market value against assessed value?

Some public property is assessed and given value on the assessment roll and some is not (Calif Const Art XIII, Sec 1). In some counties tax exempt property is shown on the roll without value, in others it is given an informal value which has no tax significance. The annexation statutes ignore these differences and make the distinction only between public and private property. May public property shown with assessed value on the roll for tax purposes be revalued by a city at market value when public property has protested? This has been done by one city in regard to property owned by that same city.

The protest sections should be entirely rewritten to conform to the realities

2 *The Existence of Two Annexation Acts, One for Inhabited and the Other for Uninhabited Territory, is Unnecessary and Has Created Serious Problems*

The law is clear that the Inhabited Annexation Act may not be used to annex territory which includes separable, distinct uninhabited area with inhabited area. On the other hand, the Uninhabited Annexation Act may not be used to annex a particular area if twelve or more registered voters reside within the area on the day the annexation commences.

The result of this is that the following anomalous situations can arise. First, some uninhabited territory can be annexed only pursuant to the inhabited act. For instance, if there are twelve or more registered voters residing within the territory to be annexed on the key date, then the uninhabited act could not be used. If the twelve or more registered voters were located on a rather large non-urban area at some distance from one another, the land might appear to be uninhabited but still be considered inhabited for purposes of annexation.

Secondly, the boundary of an area can be drawn so that a particular area is not annexable under either act. For example, if the area had twelve or more registered voters but the territory is either held to be not inhabited or it has separable uninhabited territory connected to inhabited territory, that particular area, without a change in boundaries, cannot be annexed under either act.

Thirdly, some territory apparently can be annexed under either act. For instance, assume a situation where the territory to be annexed consists only of five small city lots with a home on each lot, with families consisting of parents and ten children on each. The territory would be inhabited by any reasonable definition with ten adults and fifty children, yet because there would be less than twelve registered voters, the territory would be considered uninhabited within the meaning of the Uninhabited Annexation Act. While it does not appear that any cases have decided the point, there seems to be little doubt that this same territory could also be annexed under the Inhabited Act because it is actually inhabited. It should be clearly understood that the definition of uninhabitaney found in the Uninhabited Annexation Act (Govt. Code Sec. 35303) does not apply to the Inhabited Act. Territory which has twelve or more registered voters is not automatically inhabited.

The only significant purpose that we have noticed for finding out whether the territory is inhabited or uninhabited, and the only reason for having two acts, is so that an election will be required if the territory is inhabited. Conversely, an election is made unnecessary if the territory is considered uninhabited.

As can be seen from the above examples, a city could annex highly uninhabited territory without an election if less than twelve registered voters were involved. The territory could be urban and still be subject to the uninhabited act. On the other hand, large tracts of territory with very small numbers of people involved could be annexed under the Inhabited Act and not under the Uninhabited Act merely because twelve or more registered voters reside therein and are sprinkled sufficiently throughout the territory to have the area considered inhabited for the purpose of the Inhabited Annexation Act. There appears to be no reason for the differences which exist in the various provisions of the two acts except in regard to the need for an election.

3 Other Problem Areas in the Annexation Acts

There are other troublesome sections which either in practice or by production of litigation are bothersome to people working in this field. A few are:

Government Code

- (1) The contiguity sections: 35002 3, 35002 5, 35003, 35009, 35104, 35105, 35105 5, 35141, 35200, 35201, 35201 5, 35250 (Adjacent), 35302, 35304 5, 35450 (adjacent), 35470
- (2) The sections precluding a new annexation or incorporation for a set period of time in case an annexation or incorporation proceeding is not completed: 35007, 35122, 35134, 35254, 35315,, 34302 5, 34307 1, 34316, 34325 1
Some sections apply to any of the same territory and others only if the new annexation involves substantially the same territory.
- (3) The various sections involving priorities of competing cities: 35113, 35115, 35305, 34302 6, 34303 1.

PROPOSED SOLUTIONS

A. A Statewide Agency or Regional Agencies Should be Created to Administer Annexation and Incorporation Procedures.

In our opinion the most important improvement that could be made in the annexation and incorporations procedures would be to create a statewide agency or, in the alternative, a series of regional agencies to administer annexation and incorporation procedures.

Much if not most of the difficulty which has arisen in annexations has developed, as mentioned above, from the fact that the city council of the city desiring to annex is the judge, fact-finder, and administrator in the proceedings. They are interested and subjective parties and should not be expected to carry the burden of protecting the rights of opposing persons and parties.

In our opinion establishing an independent agency would be the most economical and efficient way to provide a fair procedure for the property owners, the cities annexing, and the adjoining cities. Also, flexibility in the annexation procedures could be attained both as to boundaries and as to conflicting claims of cities and incipient cities. Substantive standards for incorporation and annexations could be provided for the guidance of such an agency. The agency could make

decisions based on considerations broader than those now examined by a particular city which happens to make the first move in an annexation. Jurisdictional disputes could be solved by such an agency without the need to involve the courts or the Attorney General except for court review of decisions of the agency. Such review could be limited. As it now stands, there is no place in the incorporation or annexation proceeding for private persons, cities, or other groups effectively to articulate their opinions as to the inadvisability of a particular incorporation or annexation.

The protections for the property owners and residents of the communities should remain. The agency should not be permitted to force an annexation or incorporation on a community. For that matter, it might be precluded from initiating annexations or incorporations. Even if the agency should decide that certain boundaries should be changed, the ultimate political decision would be in the property owners, citizens, cities, and city councils.

B. Whether or Not a New Agency is Created, the Annexation Acts should be Combined into One Act so that Confusion Caused by Two Acts is Removed.

Whether a State agency is created or annexations remain in the hands of city councils, a single act should be drafted to replace the two major acts and some minor acts which now exist. This procedure would be more easily utilized by the cities and the property owners, and the same protections could be provided as are now present. In our opinion the major problem in drafting a single act would be to create a test for determining when an election must be held. As we indicated above, the present test of "inhabited versus uninhabited" creates fictional inhabitancy and uninhabitancy. We feel a decision as to an election should be based upon a formula taking into account the amount of territory involved and the density of the population. An election could be required in annexations of densely populated areas. In the less densely populated areas, or in truly uninhabited territory, no election would need to be held. Moreover, if a densely populated area were combined with a sparsely populated area, an election could be held in part of the area and not in the other, or for the entire area.

Property owners in less densely populated areas can now (and could under a new act) cause termination of annexation or incorporation proceedings at the time of protest hearing and, therefore, would rarely, if ever, need an election.

C. The Protest Sections

Whether the annexation procedures remain in two statutes or are combined into one, the protest sections should be rewritten to solve the problems we discussed above.

D. Other Changes

There are other improvements which could be made in the annexation statutes. It would seem that a new statute could best be drafted by a group of people thoroughly familiar with the annexation act. The changes necessary are both numerous and technical and cannot be fully explored in a presentation such as this.

CONCLUSION

California has been growing rapidly. Many citizens have been obtaining a bad impression of their city councils because of action taken under the annexation statutes. It would seem an immediate attempt should be made to modernize and streamline the incorporation and annexation statutes. It is not intended by this to mean that the statutes should be modernized and streamlined to increase the number of incorporations and annexations. That is a policy question. Annexation laws should be improved in order that scientifically, rationally, and with common sense the question of incorporation or annexation can be considered by cities, counties, citizens, and property owners in an intelligent manner. Undoubtedly many annexations and incorporations have taken place in California which were not in the best interests of the people of the State or of the communities. On the other hand, many annexations which were necessary have been prevented by provisions of the act. All groups for and against annexation would gain in understanding and in good relationships by legislation which does not perpetuate the conditions which now exist.

CHAPTER VIII

RECODIFICATION OF THE ANNEXATION AND RELATED INCORPORATION STATUTES

The nearly unanimous testimony of all witnesses who considered the matter at the three hearings supported the conclusion that the annexation and incorporation statutes are badly in need of recodification. They claimed that the processes contained in these statutes are too cumbersome, burdensome, and confusing, and thus should be rewritten. Mr. James A. Nicklin, City Attorney for the cities of Arcadia and El Monte, summarized this viewpoint when he stated that there have been more than 250 amendments to the annexation sections of the Government Code between 1949 and 1959, and that this averaged better than forty amendments per regular session of the Legislature during the last six regular sessions. This is a lot of legislation in one small segment of the Code structure. As these statutes have been amended to meet the specific growing problem areas in Los Angeles County and Santa Clara County, in the main, in the last few years, they have become increasingly burdened with ambiguities and internal conflicts.

It is felt by most experts in this field that the bulk of these defects can be corrected by a careful recodification designed to attain clarity with a minimum of substantive legislative change. Even though any attempt to resolve the ambiguities and conflicts will necessarily require that certain differences of opinion on the interpretation of existing law be resolved one way or the other, it is felt that agreement could be reached by all affected interests on legislation which would resolve the technical problems with minor substantive change.

In the light of these findings, the Committee has directed the Legislative Counsel to work on a recodification of the annexation and incorporation acts. That office is presently working on a step by step analysis of the acts, pointing out in comparative columns the conflicts and the ambiguities. After this is done, the Committee plans to sit down with representatives of the League of California Cities, the Supervisors Association, and others, to work out the conflicts and the ambiguities, with the idea to keep to the minimum the amount of substantive change necessary to attain clarity. It is hoped that this can be done early in the 1961 General Session so that a recodification bill can be presented to the Legislature which is acceptable to both sides. Then any substantive legislative changes which are introduced by other interested parties during the Session can be tied into the recodification bill if and when it is enacted into law.

The Committee hopes that this recodification will help to clear up the problem areas within the statutes themselves and thus aid those practitioners in the field who must work with these statutes daily.

CHAPTER IX

CONCLUSION

The Committee hopes that by outlining the basic approaches and recommendations to the annexation and related incorporation problems of the four main groups interested in this field it has given the reader a complete and full picture of the basic thinking of city, county and State governmental representatives in this field and by keeping these approaches in mind, he can better understand the legislative recommendations which are introduced at the 1961 General Session and future sessions. As stated earlier, this report was not meant to outline definite Committee recommendations but only to indicate the findings and recommendations of the four main groups in this field.

However, after hearing and studying all the presentations delivered at the committee hearings, and questioning the various witnesses, the Committee has come to certain conclusions which are not meant to be definite legislative recommendations as such but only to be recommended as guides to be used by those drafting substantive legislative changes in the annexation and incorporation statutes. The Committee believes that while it is important to have orderly development of urban areas great care must be taken in proposing legislative procedures designed to cope with these problems. The following points should be kept in mind:

- 1 The home rule concept of local government must be preserved;
- 2 The problem of overcentralization of authority in a State agency should be thoroughly weighed in all of its aspects;
- 3 Many of the problems of annexation and incorporation are the direct results of an unprecedented population increase which in turn does not give time for orderly growth,
- 4 Changes in the law must recognize the rights of individuals, as well as the rights of cities and counties in their total relationship to each other,
- 5 Annexation and incorporation problems are limited to a comparatively small land area of California even though these areas comprise a substantial portion of the population centers of the State,
- 6 That between the period of 1953 to 1960 the number of annexation problems and areas of the State that have experienced troubles have declined.

ACKNOWLEDGMENTS

The Committee wishes to express its sincere appreciation to all those individuals, organizations, and governmental agencies, without whose patient help and co-operation it would have been impossible to make the study as culminated in this report. The Committee in particular wishes to express its gratitude to Lewis Keller, associate Counsel of the League of California Cities, Supervisor Paul Anderson, Chairman of the Urban Problems Committee, and Jack Merelman, Legislative Consultant, both of the County Supervisors Association of California, and Philip Simpson, Executive Secretary of the Governor's Commission on Metropolitan Problems, for their detailed presentations at the final hearing of the Committee in November 1960, and in general, for their overall co-operation throughout the whole interim study period.

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**ASSEMBLY INTERIM COMMITTEE ON
GOVERNMENTAL EFFICIENCY
AND ECONOMY**
to the
1961 General Session of the California Legislature

House Resolution No. 326, 1959

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COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
SACRAMENTO, CALIFORNIA, January 2, 1961

HON. RALPH M. BROWN
Speaker of the Assembly

MEMBERS OF THE ASSEMBLY
Assembly Chamber, Sacramento, California

GENTLEMEN: Pursuant to House Resolution No. 326, 1959 Session of the California Legislature, your Assembly Interim Committee on Governmental Efficiency and Economy herewith submits its report covering its studies during the 1959-61 interim.

For reasons of economy and greater efficiency this committee requested advance copies of all testimony, and limited hearings primarily to discussion based on such previously submitted testimony. In addition to reducing costs, this enabled our committee members to study most of the testimony prior to the meeting and to prepare questions.

This report summarizes our findings and recommendations. Most exhibits, statements and research material are not reproduced in this report for reasons of economy and readability, but will be found included with the complete transcripts.

Respectfully submitted,

LESTER A. McMILLAN, Chairman

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BUY AMERICAN

Proposals to amend or repeal the California Buy American Law were assigned for interim study to the Assembly Interim Committee on Governmental Efficiency and Economy. Specifically, the committee considered Assembly Bill 335 (Rees) and Senate Bill 251 (1959).

FINDINGS

On the basis of hearings held in Los Angeles and San Francisco, the committee concludes that.

1. The present law does give protection to American and California manufacturers and producers
2. Foreign labor costs and foreign material costs seem to be in most cases much lower than American labor and material costs. There are, however, no precise figures as yet developed by any agency of government which fully show the true differential in labor, technical skills and material costs between a United States manufacturer and a foreign manufacturer
3. There is no doubt that some foreign manufacturers can supply goods to the government agencies of the State at a lower price than the price charged when purchased from American manufacturers, however, the result of such purchases may be to reduce the production on the part of American manufacturers by just that amount
4. Oftentimes the amount of sales made by the American manufacturers to government agencies is the differential between full production and producing at a much lower rate of capacity.
5. In determining what preference should be given to American products, it is necessary to take into consideration the difference in the cost of manufacture, labor cost and taxes paid by the domestic producer to both the State of California and the federal government. This difference should be weighed against the lower price of foreign goods purchased by a public agency and the tax savings to the people of California.
6. Although this is a matter which involves foreign trade and therefore might be exclusively within the province of the federal government, the United States at Geneva, in October 1947, entered into a treaty containing a provision that the United States had released this particular field to the State in the following language:
"The provisions (referring to the provisions of the treaty) Section 5 of Article 2 of Part 3 of this agreement, the approved provision shall not apply to the procurement by governmental agencies of products purchased for governmental purposes and not for resale or use."
7. Further consideration should be given to the proposed legislation and its possible effects.

CANINE POLICE

The Assembly Interim Committee on Governmental Efficiency and Economy investigation on the use of dogs in police work was authorized by H. R. 423 at the last session of the Legislature

Increasing dangers experienced by officers operating alone indicate that some measures should be taken to provide protection for these officers without decreasing community protection. Considering the cost that would be entailed if enough additional policemen were hired to permit two in a car, the committee felt some alternative method should be given serious study.

The committee decided to investigate the practicability of using dogs in police work, and particularly the idea of using dogs as a "second man" in patrol cars.

The committee heard testimony as to limitations on the type of task a dog could perform, the cost of training, length of service of the animals, liability of departments using dogs, availability of trainers, desire of police personnel to work with dogs, and experience of areas which had formerly used dogs or were now using them.

In addition, the committee analyzed research data submitted by the committee staff and the California Highway Patrol Research Staff.

FINDINGS

It is recommended that legislation be introduced at the 1961 General Session which will permit the State to conduct a trial police dog program under the following conditions:

1. The program should be conducted by the California Highway Patrol with the co-operation of and help from other police agencies throughout the State, to determine and fulfill the needs of these areas.
2. This trial program should consist of not less than 10 dogs nor more than 20. The training period should last not less than four months.
3. A professional trainer should be employed by the California Highway Patrol to direct the training of these animals for the duration of the trial period and for retraining needs.
4. Training facilities should be constructed near the present California Highway Patrol Police Academy, so as to utilize berthing facilities for the handlers. Handlers should be selected only on a voluntary basis.
5. The Department of Finance, the Legislative Analyst and the California Highway Patrol should work together to prepare and submit a proposed budget for necessary construction and operational costs.
6. The California Highway Patrol should appoint experienced and interested police officers within its department to administer this program. Suitable emblems and compensation should be offered.

for members of the California Highway Patrol Police Dog Program to encourage the proper motivation

7. Upon completion of training, the animals should be distributed as widely as possible throughout the State to insure maximum recognition and familiarity
8. The California Highway Patrol should have the authority to reject any dog or handler at any time, so that only those temperamentally and physically suited would be graduated from the program.
9. Animals accepted as part of the program should become the exclusive property of the California Highway Patrol and be subject to its disposal.
10. The California Highway Patrol should be authorized to negotiate with local police departments for training of their handlers and dogs by the California Highway Patrol on a cost plus fixed fee basis.
11. The California Highway Patrol should evaluate the program and report to the Legislature prior to the 1965 Session on the feasibility of expansion, transfer of administration, or elimination of the program
12. There should be no restriction as to breed of animals for the program. Selection should be made on the basis of size, intelligence, age, aggressiveness, and availability. Final selection should rest with the trainer under the supervision of the California Highway Patrol.
13. All budget requests, proposed legislation and procedural proposals should be made available to the Legislature prior to the 1961 Session.

EMPLOYMENT AGENCIES

A hearing was held in Los Angeles October 5, 1960, on Assembly Bill 2796 introduced by Assemblyman Augustus F. Hawkins. In preparation for the hearing, the committee staff sent questionnaires to all licensed private employment agencies in California. This survey was supplemented by an intensive study of fees charged in four selected areas, and by a confidential spot-check of 30 representative agencies in the Los Angeles area.

Extensive testimony was offered by Labor Commissioner Arywitz and his staff, the California State Employment Agencies Association, and others.

The extensive research program of the committee staff was materially facilitated by the co-operation of the United States Department of Labor Bureau of Labor Standards, and the California Labor Commission.

FINDINGS

The necessity of regulating and licensing private employment agencies has already been recognized by law in California and 43 other states. Since one of the most important reasons for such regulation is the protection of job-seekers against exorbitant fees, 16 states and Puerto Rico now also regulate placement fees.

At present, California simply requires filing of fee schedules with the Labor Commissioner, but does not go further in limiting fees. The commissioner, however, can approve only the form and not the content of these fee schedules.

There is an apparent trend toward employer-paid fees. This is not yet true, however, of the majority of placements.

A need exists to require job advertisements by agencies to be accurate, refer to a specific and available job, and to specify the placement fee.

Some agencies charge fees against the rate of monthly or annual pay, rather than the actual earnings.

Despite testimony by the association to the contrary, the official figures filed by agencies themselves show that in 1955 out of 188 agency fee schedules reported from the Los Angeles Metropolitan area, 142 showed fee rates of 50 percent for permanent placements earning \$325-\$399 per month. Eighteen of the 188 agencies reported fee charges of 50 percent even where the monthly earnings ranged from less than \$60 up to \$139.

In its memorandum of November 1959 on private employment agencies the United States Department of Labor, Bureau of Labor Standards, reported that "Where the agencies are free to set fees without limitation, experience has shown this often leads to charging of exorbitant fees."

Legal testimony at the hearing and the advice of the Legislative Counsel contradict assertions by opponents that A. B. 2796 would be held unconstitutional by the courts. The principle reportedly laid down

by the United States Supreme Court is that the Legislature must decide if the legislation is in the public good.

Both testimony and committee studies show the private employment agency field to be highly competitive. The State Department of Employment and union hiring halls offer additional competition.

Charges by proponents that an agency has a monopoly over the offer of a specific job may be factually true, but of little significance in a field where the category of many similar jobs is the important factor. It is also probable that few agencies hold exclusives from employers, as testified by J R Pierce, President of the California Employment Agencies Association.

Mr. Pierce also placed himself and his Association on record as being opposed to "unconscionable fees". Whether the association can make substantial headway in policing this industry is questionable in view of its limited membership—approximately 200 out of more than 800 agencies.

A. B. 2796 should be amended to exclude nurses registry agencies and such labor contractors as "Manpower, Inc.," "Western Girl," "Kelly Girls," etc.

484 agencies co-operated in answering the committee's questionnaire. Based on their replies, 22.1 percent claim to have personnel with college degrees, and payroll expense is reported to average 48-50 percent of total gross expenses. An accurate cost of operation figure is not yet available.

The Commissioner of Labor should be requested to formulate in a letter to this committee his requests for legislative action and amendments to A. B. 2796. Following receipt of this letter the committee will consider the matter further.

FAIR TRADE

Assembly Bills 1789, 1790 and 1791 (Masterson) and Senate Bill 1379 (Murdy) were introduced in the 1959 legislative session. The subject matter of "Fair Trade" was referred for interim study and assigned to the Assembly Interim Committee on Governmental Efficiency and Economy.

Based upon the testimony offered at several hearings in various parts of the State the committee presents this progress report.

FINDINGS

1. Resale price fixing by state law is rapidly diminishing in effectiveness, popularity and legal status. At the peak of 1941, 45 states had enacted resale price maintenance laws. At that time, only the States of Missouri, Texas and Vermont, and the District of Columbia were without such legal price fixing statutes. Since that time, the highest courts of 16 states have declared such laws unconstitutional or have nullified their effectiveness by holding the nonsigner clause to be unconstitutional.

Currently, only 30 states, including California, have resale price maintenance laws

A number of these state laws incorporate provisions missing in the California statute. These include: (1) Exemption of local government from the application of resale price maintenance acts (this exemption of governmental agencies is in the acts of New York, North Carolina, Virginia, Illinois, Massachusetts, New Jersey, Pennsylvania and Tennessee); (2) in these and other states there are exemptions extended to all nonprofit organizations, libraries, hospitals, etc.; (3) notice is required to be given a manufacturer before his trademarked, price-fixed goods are sold in a closing out sale and he is given the opportunity to repurchase such goods according to a specific pricing formula.

The proposed federal laws include provisions similar to most state resale price maintenance laws, but not provided in present California law, such as notice to the public and to the manufacturer's preceding closing-out sales, and including exemption for charitable and religious organizations, or to agencies or instrumentalities of (1) the government of the United States, (2) the government of any state, territory, or possession of the United States, or (3) the government of any political subdivision of any state, territory or possession of the United States, which acquire the merchandise not for resale to the consuming public.

The proposed federal laws in the main also provide that a public agency, the Federal Trade Commission, be charged with enforcement of the law, rather than the delegation of this policing power to private manufacturers as embodied in California law.

2. Preliminary and incomplete statistics indicate total sale of resale price maintenance goods in California is approximately 10 percent of all retail sales or about two billion dollars per year.

3. The usual markup of merchandise under resale price maintenance is reported to be 50 percent of cost. For two billion dollars of price contract merchandise, basic cost to the retailers was almost one billion four hundred million dollars.

As items in free competition can support only a 20 to 25 percent markup, it is claimed that without the artificial price and profit support of so-called "fair trade" the consumers of California would save approximately \$350,000,000 per year on the purchase of just those items now under resale price maintenance contracts.

4 Further research is needed to reach with accuracy any conclusions in this area of profit margins and markups. Manufacturers, wholesalers and retailers are, as a rule, extremely reluctant to co-operate in a study of the profit margin and markup phases of so-called "fair trade" items as related to similar items sold in free competition.

Until such a thorough study is made, there can be no objective conclusions regarding the price the consumers of California are paying for the operation of resale price maintenance in this State.

5 Further study is required to document the extent of the manufacturers' diligence, equity and uniformity in their enforcement of resale price maintenance contracts.

Preliminary evidence submitted to the committee indicates that some manufacturers may use their police powers under the act to favor their friends and punish their enemies.

Only by further hearings, with case histories of enforcement from subpoenaed manufacturers, can the truth or falsity of this charge be established and the propriety of delegating police power to private entities be properly considered.

6. It is generally admitted that in this State as well as on a national basis—the hard core of support for so-called "fair trade" or resale price maintenance is the association of retail druggists. While representatives of several of the other 38 segments of retail trade did contact the committee and testify at the hearings in favor of continuing resale price maintenance in this State, it was evident that some of such witnesses appeared at the request of the retail druggists.

Associations of retailers appearing on behalf of resale price maintenance were the California Pharmaceutical Association, the California Grocers Association, Appliance Profession Association, California Retail Jewelers Association and the California Retailers Association.

An association of distributors was the California Association of Tobacco Distributors.

The California Cosmetic Association was the only association of manufacturers to appear on behalf of continuation of resale price maintenance. Individual manufacturers such as Max Factor (cosmetics), Miles California Company (pharmaceutical) and Schenley Industries (alcoholic beverages) testified in favor of resale price maintenance.

A small unit of organized labor—Retail Clerks Union Local No. 770—is recorded as favoring so-called "fair trade" as is one wholesaler—manufacturer of drugs—McKesson and Robbins Company.

7. Favoring repeal of California's resale price maintenance law were:

The National Association of Consumer Organizations, often called "closed" stores, co-op houses or discount houses.

The California Federation of Labor—AFL-CIO.

International Association of Machinists

The California Farm Bureau Federation

Professor John T. Wheeler, Department of Business Administration, University of California

Professor E. Bryant Phillips, Department of Economics, University of Southern California

Associate Professor Procter Thomson, Department of Economics, Claremont Men's College.

RECOMMENDATIONS

On the basis of information available to date, it is recommended that consideration be given the following proposals:

A The present law be amended to exempt from provisions of the so-called "Fair Trade Act" "resales to charitable or religious institutions, or to agencies or instrumentalities of (1) the government of the United States, or (2) the government of any state, territory or possession of the United States, or (3) the government of any political subdivision of any state, territory or possession of the United States, which acquire the merchandise not for resale to the consuming public."

B The title of the present law be amended so that the statute shall be known as the "Resale Price Maintenance Act" instead of the "Fair Trade Act."

C The present law be amended to exempt from provisions of the act "contracts which stipulate retail markup in excess of 40 percent of invoice cost"

D Additional study be given this subject, in an effort to accumulate additional information particularly regarding equity in enforcement of manufacturers' contracts, the views of small manufacturers, and the subject of price and profit margins under resale price maintenance and under free competitive conditions

LOSS LEADERS

Assembly Bill 88 was introduced at the 1960 First Extraordinary Session by Assemblyman Edward Gaffney with 26 other Assemblymen as co-authors. The bill was placed on special call by the Governor at the request of the Attorney General. Assembly Bill 88 and a companion bill, Senate Bill 70 (Burns) were introduced at the Governor's request.

FINDINGS

According to testimony by Mr. Wallace Howland, Assistant Attorney General, under the *Cartwright Act* the requirement of proof of specific intent to destroy competition is an essential element of the statutory offense. The California Supreme Court has held that in the absence of proof of such intent, the statute might be unconstitutional as being an unwarranted interference with the freedom of contract. In addition, certain statutory defenses are provided, as in close-outs or in the sale of seasonal or perishable goods.

Some form of loss leader or sale below cost statutes now exist in 40 or more states.

The basic contention of proponents is that bait merchandising leads to elimination of competition and development of monopoly.

The necessity was recognized of amending Assembly Bill 88 to exempt manufacturers and limit application of the proposed law to middlemen and retailers. Mr. Howland promised to submit the language of such an amendment.

The committee recommends further consideration of these proposals and the suggested amendments.

METALLURGICAL, MINING, PETROLEUM AND GEOLOGICAL ENGINEERS

- 1 Petroleum Engineers are already under the provisions of the Civil and Professional Engineers Act. The right to use the title professional engineer with the specialization in petroleum is a protection of that title.
- 2 There are no apparent rigorous requirements defining the manner of practice under the title of petroleum engineer.
- 3 The activities of petroleum engineers and petroleum geologists overlap to a considerable extent, making clear distinctions difficult.
- 4 Further study should be given to the licensing needs of all branches of the engineering profession. The subject group already studied should be considered as part of the total situation.
- 5 The committee recommends that the Legislature consider authorization of a thorough study of all phases of state licensing of professions, vocations and businesses, to determine the possibilities of simplification, and elimination of duplication; special attention should be given to analyzing and evaluating the functions, operations and effectiveness of the various administrative agencies concerned.

MOTOR VEHICLE REPAIR BILL

Assembly Bill 2898 (Meyers), the Motor Vehicle Repair Bill (1959) was the subject of a hearing by the Assembly Interim Committee on Governmental Efficiency and Economy in Los Angeles, October 7, 1960. Because the testimony and proposed amendments developed along two major lines, the chairman divided the subject into two parts. This report summarizes the findings and recommendations of each.

I. MOTOR VEHICLE REPAIR

Findings

1 The major repair of modern automobiles is a complex industry, lacking as yet in specific standards and descriptive language. As mechanical innovations such as automatic transmissions are perfected, their repair requirements move from specialists skills back to general motor mechanic skills. As yet no satisfactory definition distinguishes mechanical repair from simple part replacement or servicing.

2 It is argued that public safety requires assurance of special skills and equipment for proper brake lining and master cylinder adjustments, injection systems, steering gear, etc. Assemblyman Levering requested Mr. Fred L. Martin, representing the International Association of Machinists, to supply the committee with statistics on accidents attributed to faulty workmanship.

The committee recommends consideration of some form of compulsory state inspection system. Testimony indicated that approximately 18 states now have some such system. The Texas experience was suggested as being particularly helpful.

II. DOMESTIC APPLIANCE REPAIR

Findings

Proposals to license domestic appliance service and repair should be considered separate and distinct from motor vehicle repair.

Testimony was offered to the effect that 2,000 appliance repair shops in California do some \$300,000,000 annual business. The legitimate industry and the public are harassed by unethical operators and unqualified workmen. One Los Angeles operator was described as operating under 17 different names. An Oakland firm was described as being the subject of more than 200 complaints filed with the Oakland Better Business Bureau.

Unrestricted, misleading and bait advertising in the telephone classified directories and other media was charged as being a major contributing factor in defrauding the public.

Testimony indicated that in certain appliances, including radio and television, the average householder has no immediate way of knowing when he is being defrauded. Claims were made by several trade associations favoring licensing proposals, that 29 percent of all complaints filed with the better business bureaus in California are concerned with this subject.

Opponents objected that necessary training programs are now being offered and that wherever installation becomes part of a building it should come under contractors. One association opposed licensing appliance repair but was not opposed to licensing television and radio repair.

It is recommended that further consideration be given to the proposed Consumer Technical Service Business Act submitted at this hearing, as a basis for possible legislative action.

PRIVILEGE OF NEWS SOURCES

With the written approval of Speaker Ralph M. Brown, as required under Section 11, H. R. 326 as amended, Chairman Lester A. McMillan convened the full committee June 6, 1960, to consider proposals to amend Section 1881.6 of the California Code of Civil Procedure.

These proposals would extend to other news media such as television, radio, news periodicals, wire press services, and others the same privilege of news sources now accorded newspapers under Section 1881.6 (C. C. C. P.).

Notice was taken of the fact that similar legislation introduced by Senator Shaw in the 1959 session (S. B. 1126) was passed by the Legislature only to die by the Governor's pocket veto. In view of the widespread support for and no apparent opposition to this legislation, the committee undertook to study the matter more fully.

FINDINGS

After a full day of hearings to which both Governor Brown and former Governor Knight, attorneys, legislators, and a long list of expert witnesses were invited, the committee determined the following:

1. (a) At present, 12 states including California have statutory privilege for newspapers.
(b) Four of these states extend privilege to include news services: Indiana, Montana, Ohio and Pennsylvania.
(c) Six of these states include radio: Alabama, Arkansas, Indiana, Kentucky, Maryland and Montana.
(d) Five of the states include television: Alabama, Indiana, Kentucky, Maryland and Montana.
2. The present statute would seem to discriminate in favor of newspapers as against other news media, thus raising a question of its constitutionality.
3. All testimony offered demonstrated that news gathering and preparation required comparable degrees of reportorial skills, experience, competence and ability to inspire confidence in all news media.
4. Despite widespread advance publicity given to the meeting, no opposition was offered to the proposed legislation.
5. Further consideration should be given to the matter of keeping records of news reports and qualifying acceptable media.
6. The committee recommends that appropriate legislation be introduced at the 1961 session extending to all qualified news media the same privilege of news sources now extended to newspapers under Section 1881.6 (C. C. C. P.).

SAN SIMEON STATE PARK

The Assembly Governmental Efficiency and Economy Committee was requested under H. R. 4233 (1959) to investigate complaints concerning the service to the public at the Hearst San Simeon State Historical Monument.

The Hearst San Simeon State Historical Monument is a relatively new and unique member of the State's recreational facilities. It is administered by the California Division of Beaches and Parks.

One unusual aspect of this facility is that it operates at a profit. Since its opening to the public in June of 1958, it has been visited by thousands of people. The crowds have been so great that there has been no real opportunity to make needed major readjustments in operating procedures.

Problems of operation include the following:

1. Staffing;
2. Housing for personnel;
3. Adequate public sanitary facilities;
4. Remoteness from population centers;
5. A satisfactory reservation system;
6. Limited parking, road and tour facilities;
7. Lack of needed elevators or adequate stairways.

The committee studied these problems at the location, and held a public hearing October 9, 1959. Subsequently, on June 2, 1960, Chairman McMillan requested a report from the Division of Beaches and Parks to determine what measures had been taken in conformity with preliminary recommendations of this committee as follows:

1. Measures to increase daily attendance.
2. A reservation system
3. Capital outlay construction at both the base and the top of the monument (funds were appropriated for this at the last budget session, and an amendment was inserted to the outlay expenditure to require construction at both sites).
4. Some form of electronic warning device at Monterey and San Luis Obispo to prevent tourists making unnecessary trips
5. Results of studies of the feasibility of ski-lift type of transportation up the mountain.
6. Alternative tours for those desiring to see more of the monument's treasures
7. Contracting with an expert to solve transportation problems.

Earl P. Hanson, Deputy Chief of Operations of the Division of Beaches and Parks replied as follows

1. Measures to Increase Attendance

During the summer season (July, August, through Labor Day) it is anticipated that we will be able to allow at least *1,900 persons to visit the monument daily as compared to 1,300 daily last year.* This will be accomplished by running tours every 12 minutes. At the present time, on weekends, the tours are

running every half hour until the volumes require 20-minute tours. Weekend tours are now on a 20-minute schedule until July when they will be changed to every 12 minutes

2. *A Reservation System*

The matter of reservations is still under consideration with the *first operation scheduled for winter of 1960-61*. We are presently working with the Department of Natural Resources as to

- (a) Time of reservation;
- (b) Type;
- (c) Selling price

We have also requested of the Department of Natural Resources recommendations on procedures and staffing necessary to implement the reservation system, and reservations for public carrier patrons.

3. *Capital Outlay Construction*

Architectural and engineering studies have been made on the visitor center. We have received approval from the Department of Finance and the bids for work on the first phase will be out within thirty days. The visitor center will consist of four ticket stations, information center, covered and protected areas for waiting visitors, and a comfort station. Continued development of the center is planned in the 1960-61 major construction budget. This budget also provides for roads and parking and this project will be handled by contract with the Division of Highways.

4. *Electronic Warning Device at Monterey and San Luis Obispo*

This matter will require more study and at the present, we are unable to schedule the necessary time for such work as other problems for the monument and other units are pressing.

5. *Tramway*

The tramway question has many facets to be considered and as it would essentially be on property owned by the Hearst Corporation, the problem first resolves into one in which the Hearst organization would necessarily have to determine whether they want their property developed in such manner. We have not recently heard from them and our investigations and recommendations from the field indicate that we need more statistics, particularly concerning the State's income, number of people to be handled, and whether the proposed operator expects exclusive transportation privileges. This has not been received from the proponents.

6. *Alternate Tours to See More of the Monument's Treasures.*

Alternate tours have been under study and we are submitting a budget item for the 1961-62 fiscal year for the construction of an elevator which will allow visitors safer access to the upper floors of the monument.

7. *Contracting an Expert to Solve Transportation Problems.*

We are currently working on this with the Department of Natural Resources and as mentioned under Item No. 2, we have submitted a number of questions to the department which involve reservations, and as such, involve transportation.

FINDINGS

In view of the improvements already made and the changes proposed or under consideration, the committee concludes that the Division of Beaches and Parks is making satisfactory attempts to remedy the situation.

The committee recommends:

1. No special legislation is needed at this time.
2. The Division of Beaches and Parks should be requested to submit a further progress report to the Legislature by October 1, 1962. The Legislature can then determine the advisability of further action or study.

STRUCTURAL PEST CONTROL

A hearing was held October 6, 1960, in Los Angeles on the subject of Structural Pest Control, A B 192 (Donahoe) (1959) and H R 82 (Dahl and Lanterman) (1960). Testimony was offered by Assemblyman Lanterman, the full Structural Pest Control Board, as well as industry associations. The California Real Estate Association communicated their views by letter.

FINDINGS

The public requires greater protection than present procedures offer, especially in regard to the inspections of residential property. Fullest possible information should be required from the operator as to the extent of service supplied, so as to distinguish between casual and thorough inspections. Report forms should be standardized and made uniform to facilitate comparison. The board currently lacks authority to spot check operators' inspection records other than those pertaining to specific complaints, or to examine inspection records in real estate escrows.

There exists a need for research as to the rate of damage caused by termites, the value of preventative work and other aspects of this field. Mr. Hodel, a former member of the board and an experienced operator, characterized the business as based on fear.

General agreement existed on the necessity of requiring operators to be financially responsible. Divergence of opinion exists as to the degree of financial responsibility required or the type of bond or other surety that should be required.

At the suggestion of Assemblyman Levering the board was requested to send Chairman McMillan a letter summarizing its needs and recommendations.

The chairman appointed a subcommittee under Mr. Levering's chairmanship to study the whole matter more fully and to arrange a conference with the State Real Estate Commission, the Structural Pest Control Board and the subcommittee before the opening of the 1961 legislative session.

On December 7, 1960 this conference was held in Sacramento under Assemblyman Levering's chairmanship. Assemblymen Elliott, McMillan and Reagan attended as members of the subcommittee. All state agencies invited were represented either by the chief officer or his deputy.

Legislative Counsel's Opinion No. 5060 indicated that the general subpoena powers of the Director of the Department of Professional and Vocational Standards could be delegated by him to the Structural Pest Control Board. This Opinion will be found together with the complete transcript of the October 6 hearing.

The agencies agreed to function in an inter-agency committee to develop voluntary co-operative action in regard to escrows and certain other problems. The matter of achieving a workable definition of pre-

ventive and corrective termite control was undertaken by the Real Estate Department and the Structural Pest Control Board.

Mr. Donald McClure, Assistant Real Estate Commissioner, promised that the Real Estate Department would issue regulations to ensure full disclosure of all termite reports to all interested parties.

The Legislative Counsel's report on H R 82 and the statement of the Structural Pest Control Board will be found in the complete transcript of this hearing.

SUBLIMINAL MESSAGES IN ADVERTISING

On December 17, 1959, the Subcommittee on Subliminal Messages of the Assembly Committee on Governmental Efficiency and Economy held a hearing in Los Angeles on Senate Bills 1100 and 1386. These bills, introduced by Senator Richards, had passed the Senate and were heard before the Assembly Committee on Governmental Efficiency and Economy prior to being referred for interim study

FINDINGS

1. Subliminal perception, or subliminal communication, refers to methods of presenting information to the eye or ear which is transmitted at such minimal levels of intensity or strength and/or duration that individuals may react selectively without conscious awareness of exposure to the message that is being presented
2. While psychological laboratory studies of this subject have been in process for many years, the matter was brought to the attention of the public through a commercial experiment in a theater a few years ago. The public's response was one of apprehension against the implied threat of unregulated and unknown subliminal perception which might influence a viewer or auditor to involuntary action or toward involuntary attitudes. The immediate potential danger seemed to come from advertisers
3. Pending further developments from research, we conclude that at the present time subliminal communication is considerably less effective than other types of communication, that is to say, communication above the threshold of awareness. Under the circumstances it seems likely that the advertiser for the present will utilize the latter type of communication and is not apt to resort to subliminal messages
4. Upon the basis of the available evidence, we do not see a need for special legislation regulating subliminal communication. The committee concludes that existing federal and state regulations seem adequate to cover all mass media including subliminal communication.

The complete testimony and Legislative Counsel Report No. 1179 are included in the complete transcript, of which this is a summary.

LIST OF WITNESSES

ROBERT E. CORRIGAN, Certified Industrial Psychologist.
MICHAEL J. GOLDSTEIN, Assistant Professor of Psychology, U.C.L.A.
JAMES REAL, Consultant in Communications
DR. GERALD BESSON, Graduate training in Psychology at Columbia U.
MRS. GERRI TEASLEY, State Chairman, Radio and Television Committee, California Federation of Women's Clubs.
MARVIN I. SALTZMAN, Editor and Publisher of Media Agencies Clients
JAMES G. LAW, representing the Department of California of the American Legion
JOHN F. ATWOOD, San Diego Council of Churches.
MRS. FOREST RADCLIFF, United Church Women of Southern California and Southern Nevada.
MRS. F. W. SPENCER, Vice President at large, California Federation of Women's Clubs.

UNFAIR CIGARETTE SALES

On Thursday, October 6, 1960, the Assembly Interim Committee on Governmental Efficiency and Economy heard testimony relative to Assembly Bill 1553 introduced February 19, 1959, by Assemblyman Charles W. Meyers.

In preparing for this hearing the committee supplemented its own staff research by material from a nationwide survey being conducted at the time by the Joint Legislative Budget Committee

FINDINGS

Nineteen states at present have special cigarette "sales below cost laws" Twenty-nine states, including California and some of the states mentioned, have general laws prohibiting sales of commodities below cost. Only nine states have no sales below cost laws at all

The difficulty of establishing intent to injure competition under the California *Cartwright Act* was emphasized at length in previous hearings of this committee on A B 88 (1960) and elsewhere As a result the Attorney-General's Office and other law enforcement agencies have testified to the problems of enforcing this law through the courts.

No opposition to A B 1553 was expressed from witnesses Some of the committee, however, questioned certain aspects of the proposal

Specifically, questions arose regarding the 15 percent presumption of retail cost of doing business (Article 1, Sec 17215, (b)); failure to correct the problem of establishing intent to injure (Article 2, Sec. 17230, (a) and (b)), and finally the philosophical justification for extending government still further into regulation of private enterprise.

Proponents argued that the State has a special interest in prohibiting unfair cigarette sales due to the following:

- 1 The sizable tax revenue derived from the wholesale stamp tax plus the retail sales tax;
2. The need to protect "legitimate" cigarette merchants from hardship due to use of cigarette giveaway or loss leader sales by furniture stores, gasoline service stations, etc ;
3. The discriminatory situation now existing whereby retail liquor stores—which historically account for a large volume of cigarette business—are prohibited under state law from loss leader sales of cigarettes or other commodities;
- 4 Because of these special situations affecting cigarette sales, failure to add adequate sales price protection is unfair to the industry.

Since the 1961 Session of the Legislature will probably be asked to deal with the problem of loss leaders and unfair business practices, the committee recommends further consideration of A B. 1553 with necessary amendments.

APPENDIX

- I. Legislative Analyst's letter.
- II. Table 1 Type of State Sales Below Cost Laws, 1960.
- III. Table 2. Wholesale and Retail Markups on Cigarettes Required by State Sales Below Cost Laws, 1960

JOINT LEGISLATIVE BUDGET COMMITTEE
CALIFORNIA LEGISLATURE
SACRAMENTO, CALIFORNIA, September 26, 1960

HON LESTER A McMILLAN
*Chairman, Assembly Interim Committee
on Governmental Efficiency and Economy
Assemblyman, 61st District
Los Angeles, California*

DEAR ASSEMBLYMAN McMILLAN Mr Maxwell Miller asked us to supply you with the following information on state "sales below cost" laws pertaining to cigarettes, as background information for your hearing on AB 1553 of the 1959 Session

Table 1 lists the states with different types of "sales below cost" laws. You will notice that nine states, including New York, have no such laws. Twenty-nine states have what we term "general" laws, i e, those applying to many products, including cigarettes. California is in this category. In addition to the general laws, some states have statutes relating only to special products, i e, cigarettes, drugs, milk, etc.

In addition to the number of products affected, another difference between general and special laws normally is in the markup percentages. For example, the general law in Pennsylvania provides for a two percent markup at wholesale and four percent at retail, while that state's special cigarette law provides for four percent at wholesale and six percent at retail. Another feature of some of the general laws, California's for example, is that they don't provide for any markup percentage. All of the special laws relating to cigarettes, however, have markup percentages.

Table 2 gives the wholesale and retail markup on cigarettes as provided for in the various types of "sales below cost" laws. Most of the states in this table have special laws relating to cigarettes, but some, Idaho for example, are covered by their general laws. Not all of the states with markup percentages are included in this table. Five states - Louisiana, Minnesota, Montana, North Dakota and South Carolina, did not reply to our questionnaire and we are not sure whether their laws cover cigarettes.

The manufacturer's price in Table 2 is a composite figure consisting of the prices of regular, king and filter cigarettes weighted according to the consumption of each variety in the United States during 1959. This table gives the markups both in percentages and dollar amounts. The latter figure is important because different states with the same percentage markups will have different amounts depending upon the base upon which computations are made. For example, the two percent markup at wholesale ranges from \$2.12 to \$2.84 per case, while the six percent markup at retail ranges from \$6.52 to \$8.74.

The following tabulation shows how California would compare with the states in Table 2, if AB 1553 were law:

Manufacturer price	\$105.75
State tax	18 00
Basic cost	123 75
Wholesale markup	
Percent	2%
Amount	2.48
Cartage	
Percent	.75%
Amount	0.98
Wholesale price	127.16
Retail markup	
Percent	15%
Amount	19 07
Retail price	146.23

Sincerely,

A ALAN POST, Legislative Analyst

TABLE 1
TYPES OF STATE SALES BELOW COST LAWS, 1960

State	None	General	Special
Alabama	--	--	Cigarettes
Arizona	--	x ^a	
Arkansas	--	x	Cigarettes, milk and liquor
California	--	x	Milk
Colorado	--	x	Cigarettes, liquor
Connecticut	--	x	Cigarettes, drugs
Delaware	x	--	
Florida	x	--	
Georgia	--	--	Cigarettes ^a
Idaho	--	x	Milk
Illinois	x	--	
Indiana	--	--	Cigarettes
Iowa	--	--	Cigarettes
Kansas	--	x ^a	Dairy products ^a
Kentucky	--	x	Cigarettes
Louisiana	--	x	Dairy products, drugs
Maine	--	x	
Maryland	--	x ^a	Cigarettes ^a
Massachusetts	--	x	Cigarettes, motor vehicle fuel
Michigan	--	--	Bakery products, motor vehicle fuel
Minnesota	--	x	Dairy products
Mississippi	--	--	Cigarettes, milk products
Missouri	x	--	
Montana	--	x	
Nebraska	--	x	
Nevada	x	--	
New Hampshire	--	x	
New Jersey	--	x ^a	Cigarettes, motor vehicle fuel
New Mexico	--	--	Cigarettes, liquor
New York	x	--	
North Carolina	--	--	Milk
North Dakota	--	x	
Ohio	--	--	Cigarettes
Oklahoma	--	x	Cigarettes, dairy products
Oregon	--	x	
Pennsylvania	--	x	Cigarettes
Rhode Island	--	x	Cigarettes

^a Either unconstitutional or constitutionality in doubt

SOURCE: Commerce Clearing House, "Trade Regulations Reporter," Volume 2

TABLE 1—Continued

TYPES OF STATE SALES BELOW COST LAWS, 1960

<i>State</i>	<i>None</i>	<i>General</i>	<i>Special</i>
South Carolina -----	--	x	Milk
South Dakota -----	x	--	
Tennessee -----	--	x	Cigarettes, milk
Texas -----	--	--	Grocery items ^a
Utah -----	--	x	Agricultural items
Vermont -----	x	--	
Virginia -----	--	x	
Washington -----	--	x	Cigarettes
West Virginia -----	x	--	
Wisconsin -----	--	x	
Wyoming -----	--	x	
Total -----	9	29	19—cigarettes

^a Either unconstitutional or constitutionality in doubt

TABLE 2

WHOLESALE AND RETAIL MARKUPS ON CIGARETTES REQUIRED BY STATE SALES BELOW COST LAWS, 1960
(Per Case of 12,000 Cigarettes)

State	Manufacturer price		State tax	Basic cost	Wholesale markup		Cartage		Wholesale price	Retail markup		Retail price
	Net	Gross			Percent	Amount	Percent	Amount		Percent	Amount	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Alabama -----	\$108.64		\$36	\$139.64	4.5	\$6.28	50	\$0.70	\$148.02	8	\$11.73	\$158.35
Arkansas -----		\$105.75	36	141.75	2	2.84	75	1.06	145.85	6	8.74	154.39
Colorado -----		105.75	---	105.75	2	2.12	.75	.79	108.66	6	6.52	115.18
Connecticut ----	103.64		18	121.64	2	2.43	.75	.91	124.98	6	7.50	132.48
Idaho -----		105.75	30	135.75	2	2.72	.75	1.02	139.49	6	8.37	147.86
Indiana -----	103.64		18	121.64	4	4.87	.50	.61	127.12	8	10.17	137.29
Iowa -----	103.64		24	127.64	4	5.11	.50	.64	133.39	8	10.67	144.06
Kentucky -----		105.75	18	123.75	2	2.48	.75	.93	127.16	8	10.17	137.83
Massachusetts --		105.75	30	141.75	2	2.84	.75	1.06	145.65	12 4	18.06	163.71
Mississippi -----		105.75	36	141.75	2	2.84	.50	.71	145.30	6	8.72	154.02
New Hampshire --		105.75	18	123.75	2	2.48	.75	.93	127.16	6	7.63	134.79
New Jersey -----	103.64		30	133.64	3.5	4.68	.75	1.00	139.32	8	11.15	150.47
New Mexico ----		105.75	30	135.75	2	2.72	.75	1.02	139.49	8	11.16	150.65
Ohio -----		105.75	30	135.75	2	2.72	.75	1.02	139.49	6	8.37	147.86
Oklahoma -----		105.75	30	135.75	2	2.72	.75	1.02	139.49	6	8.37	147.86
Pennsylvania --	103.64		36	139.64	4	5.59	---	---	145.23	6	8.71	153.94
Rhode Island --		105.75	30	135.75	2	2.72	.75	1.02	139.49	6	8.37	147.86
Tennessee -----	103.64		30	133.64	3.5	4.68	.50	.67	138.99	8	11.12	150.11
Utah -----		105.75	24	129.75	2	2.60	.75	.97	133.32	6	8.00	141.82
Virginia -----		105.75	18	123.75	2	2.48	.75	.93	127.16	6	7.63	134.79
Washington -----	103.64		36	139.64	4	5.59	.50	.70	145.93	10	14.59	160.52
Wisconsin -----		105.75	30	135.75	2	2.75	.75	1.02	139.49	6	8.37	147.86

SOURCE: Commerce Clearing House, "Trade Regulations Reporter," Volume 2

Column 1 —This is a composite figure and consists of the invoice price less the customary cash discount of 2 percent for payment in 10 days

Column 2 —A composite figure which includes the invoice prices of regular, king and filter cigarettes weighted according to their sales during 1959.

Column 3 —The state excise tax on cigarettes, per case

Column 4 —The starting point for computing the wholesaler's markup

Column 5 —The percentage markup provided for in law

Column 6 —Column 5 times Column 4

Column 7 —This applies only to those wholesalers that deliver the cigarettes

Column 8 —Column 7 times Column 4.

Column 9 —The sum of Columns 4, 6, and 8.

Column 10 —The markup provided for in law

Column 11 —Column 10 times Column 9

Column 12 —Column 9 plus Column 11. This does not include any state or local retail sales tax which may apply.

X-RAY TECHNICIANS

The Assembly Governmental Efficiency and Economy Subcommittee on Licensing of X-Ray Technicians conducted hearings on A B 2768 (Masterson) in Los Angeles September 17 and 18, 1959. That bill provides for creation of a five-member Board of X-Ray Technician Examiners to be appointed by the Governor and to be set up within the Department of Professional and Vocational Standards.

The bill would empower the board to issue, suspend, and revoke licenses. It outlines qualifications for members of the board, for license applicants, and for certification of schools of instruction in X-ray techniques. It also would provide penalties for failure to comply with provisions of the legislation.

FINDINGS

On the basis of the hearings held in Los Angeles, the committee finds that.

1. The main objection to A B 2768 as written is that it would permit the State to interfere in the field of X-ray. The general comment was that the technicians and others working with X-rays could handle the problem themselves and did not want, need, or desire the State to interfere. No other governmental agency in the United States had entered the field, and the California Legislature should not take the initial step.
2. Representatives of X-ray technician organizations testified they were making progress toward policing the technicians. Any action by the State would hurt their organizations. However, testimony indicated that these groups are hampered by internal differences and that they lack adequate power to police their own ranks. Since they are voluntary organizations, they cannot effectively prevent unqualified technicians from practicing in California.
3. Those doctors who have specialized in Radiology are recognizably qualified to supervise and instruct in the proper use of X-ray equipment. This group, however, comprises only a small segment of those who make use of X-rays in diagnosis and treatment. Others in the medical profession who allegedly "supervise" the X-ray technicians are often without the necessary training required to protect the public from overexposure to radiation from X-rays.
4. Objections from several groups to the proposed Board of Examiners were centered on two main points. First, that the proposed board is not representative enough of the various types of practitioners and technicians. The second objection was that they did

not like the idea of a politically elected person—the Governor—making the appointments to the board. No alternate proposals were advanced.

- 5 On the education of technicians, several witnesses objected to what they considered too stringent requirements. Those who objected strongly to the minimum standards proposed by A B 2768 as being too low, were opposed by just as many who felt that these were the minimum standards which should be imposed. Some even advocated additional training.
- 6 It was generally admitted that X-rays are dangerous to both the people being exposed and to future children and that some form of regulation—either voluntary or mandatory—should be imposed as soon as possible.
- 7 Testimony revealed that some of the organizations discriminate against technicians working for doctors of osteopathy.
- 8 Your subcommittee concludes that something should be done to prohibit incompetent X-ray technicians from working with the general public. The substance of A B 2768 should be reviewed in the light of these hearings and suitable legislation should be introduced at the 1961 Session.

o

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ASSEMBLY INTERIM COMMITTEE ON
PUBLIC HEALTH

W. BYRON RUMFORD, *Chairman*

Subcommittee on Alcoholic Rehabilitation

ALCOHOLIC REHABILITATION

MEMBERS OF SUBCOMMITTEE

GLENN E COOLIDGE, *Chairman*

RONALD BROOKS CAMERON

SHERIDAN N HEGLAND

REX M CUNNINGHAM

MILTON MARKS

CLAYTON A DILLS

HOWARD J THELIN

VIVIAN C NANCE, *Consultant*

THOMAS H WILLOUGHBY, *Legislative Assistant*

Sacramento, January 1961



Published by the

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OF THE STATE OF CALIFORNIA

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Speaker

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HON JOSEPH C SHELL
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ARTHUR A OHNIMUS
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COMMITTEE LETTER OF TRANSMITTAL

Assembly Chamber, State Capitol
Sacramento, December 8, 1960

HON. RALPH M. BROWN
*Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber, Sacramento*

GENTLEMEN :

The Assembly Interim Committee on Public Health submits the Report on Alcoholic Rehabilitation prepared by the Subcommittee on Alcoholic Rehabilitation in accordance with House Resolution No 326 of the 1959 Session

Respectfully submitted,

W. BYRON RUMFORD, *Chairman*
Assembly Interim Committee
on Public Health

SUBCOMMITTEE ON ALCOHOLIC REHABILITATION

LETTER OF TRANSMITTAL

November 3, 1960

HON. W. BYRON RUMFORD, *Chairman*
Assembly Interim Committee on Public Health

DEAR MR RUMFORD:

Attached is the report of the Subcommittee on Alcoholic Rehabilitation.

This report is the result of the testimony given at two public hearings and other information gathered by the subcommittee during the 1959-1961 interim

Respectfully submitted,

GLENN E COOLIDGE, *Chairman*
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FOREWORD

ASSEMBLY BILL 1752

The Assembly Rules Committee upon adjournment of the 1959 Session of the Legislature referred Assembly Bill 1752 to the Assembly Interim Committee on Public Health for study. The Chairman, W. Byron Rumford, appointed Glenn E. Coolidge to serve as chairman of the subcommittee. Two public hearings were held, one on November 13, 1959 in Berkeley, and one on December 15, 1959 in Los Angeles. The principal purpose of these hearings was to review the present program of the Division of Alcoholic Rehabilitation. The Legislative Auditor's office, which played such an active part early in the history of the state program, was requested by the Joint Budget Committee to make a survey of the work of the Division. Their study covered three areas, first a study of the operating and research program of the clinics; secondly, a review of the research program and particularly the staffing for that program, and, thirdly, a study of the financing of the program.

REPORT OF SUBCOMMITTEE ON ALCOHOLIC REHABILITATION TO ASSEMBLY INTERIM COMMITTEE ON PUBLIC HEALTH

OBJECTIVE

To study the question of state responsibility in the field of alcoholic rehabilitation and to evaluate present state program in relation to this responsibility

FINDINGS

1 Alcoholism is increasing throughout California among both the youth and the adult population. In 1955 the State had nearly 600,000 alcoholics, one in every 14 adults. Two California cities, San Francisco and Sacramento, rank first and second in the nation with the highest rate of alcoholism.

2 The cost of alcoholism to the State is estimated at a minimum of \$150 million per year in:

- (a) Arrests and jail maintenance (50 percent of all arrests are for intoxication),
- (b) Mental and penal institutional care;
- (c) Aid programs,
- (d) Absenteeism in business and industry.

3 From January 1954 through June 1959, 3,541 persons were admitted to six pilot clinics established by the Division of Alcoholic Rehabilitation, Department of Public Health. It is extremely difficult to assess the overall effectiveness of this clinic rehabilitation program because:

- (a) Selection procedures for patients differ in each clinic
- (b) Treatment varies in each clinic
- (c) There are no control groups against which to measure the effectiveness of treatment
- (d) Followup evaluations have only recently been completed and are not yet published
- (e) There is a shortage of professional personnel trained in the treatment of alcoholics

4 Although voluntary community alcoholic rehabilitation groups may seek the consultative assistance of the Department of Public Health, there is no formal co-ordination of their treatment programs with those of the state clinics.

5 At the inception of the state alcoholic rehabilitation program in 1954, its cost was planned to be offset by revenue from the 10-percent increase in liquor license fees. At present the revenue available from this source substantially exceeds the amount budgeted for alcoholic rehabilitation.

6 There is need for an expanded program of study, investigation and information to reach the hidden alcoholic who does not seek help and who is estimated to constitute 80 percent of the alcoholic population

7. The scope of the alcoholic problem and the multiplicity of voluntary groups associated with rehabilitation and treatment render it incumbent for the State to take the lead in co-ordinating rehabilitation efforts, in establishing adequate standards for treatment and in developing future rehabilitation programs

RECOMMENDATIONS

1. That existing alcoholic rehabilitation clinics be continued and their services expanded to include greater and more uniform therapeutic services in the areas of detoxification, medical care, psychological testing and psychotherapy, and social case work; that one condition of such expansion be the development and analysis by the Division of Alcoholic Rehabilitation of uniform methods to evaluate all present and future programs

2. That new treatment and rehabilitation facilities for alcoholics be established in communities where there is a demonstrated interest and need. The City of Long Beach in particular has repeatedly demonstrated its need for such a clinic but at present is without the facility

3. That there be established uniform referral procedures to alcoholic rehabilitation clinics by courts and other state agencies, that in conjunction with the development of such procedures more exact determination be made of the relationship of the alcoholic rehabilitation program of the Department of Public Health with similar programs in other state agencies especially the Department of Mental Hygiene and the Department of Corrections

4. That it is the purpose of alcoholic rehabilitation clinics to provide services not available through other resources or programs. Wherever possible, community voluntary services should be co-ordinated with the programs of the clinics

5. That the Division of Alcoholic Rehabilitation inaugurate a program to train new personnel in the specialized professional disciplines involved in the treatment and rehabilitation of the alcoholic

6. That the Division of Alcoholic Rehabilitation continue its program of research to develop a more complete understanding of the cause, nature, and development of alcoholism; to develop improved treatment techniques and preventative methods, by seeking out current studies and research being conducted by other international, national and local research groups

7. That in order to insure the adequacy of the instruction in the nature of alcohol which the Education Code provides for the schools of California, some minimum standards for such instruction be established, that an increased program in public information be undertaken to reach the adult population.

8. That the Assembly Public Health Committee continue its study of this subject to include some of the presently unresolved questions:

- (1) The extent and nature of state responsibility in the field of alcoholic rehabilitation.
- (2) The relationship of the division's program to other rehabilitation programs in the State
- (3) The adequacy of state activities in relation to the total problem in California today
- (4) The method of financing the state program

CALIFORNIA'S LEGISLATIVE RESPONSE TO ALCOHOLISM

Alcoholism is thought by some to be a disease, by others the symptom of a disease. It has been described as a chronic behavioral disorder manifested by repeated drinking of alcoholic beverages in excess of the dietary and social uses of the community and to an extent that interferes with the drinker's health or his social or economic functioning.¹ Although correct estimates of the extent of alcoholism in California cannot be made, in part because of the difficulty in defining alcoholism, it is apparent from the history of our Legislature that as early as 1870 the first State Board of Health was given a directive which read:

"It shall be the duty of the board, and they are hereby instructed, to examine into and report what, in their best judgment, is the effect of the use of intoxicating liquor, as a beverage, upon the industry, prosperity, happiness, health and lives of the citizens of the State, also what legislation, if any, is necessary in the premises."²

In answer to this directive, Board Secretary Thomas M. Logan, M.D., stated:

"In the full knowledge of the fact of the pecuniary loss to the State and to his family, by the idleness of the inebriate and the cost to the public treasury for his ultimate care and support in the induced impaired health, and in the last stages of destitution, to say nothing of the expense of measures of repression and punishment called for by breaches of the peace and crimes committed by the intemperate, we think the question (of alcoholism) particularly commends itself alike to the statesman and the philanthropist."³

Since that time the production, distribution and sale of alcoholic beverages have been regulated by the Legislature in various ways, but it was not until the 1950's that several bills were introduced which would have provided for a medically oriented rehabilitation and research program for alcoholics, a commission on alcoholism to study the program, a directive to the Departments of Mental Hygiene and Public Health to study the problem, and yet another which would have established nine rehabilitation clinics under the supervision of the Department of Mental Hygiene. All failed to pass.

In the 1954 Special Session the Legislature was successful in passing a bill, A. B. 9, authored by Assemblyman Glenn E. Coolidge, creating an Alcoholic Rehabilitation Commission to deal with "all phases of the treatment and rehabilitation of alcoholics."⁴ The life of the commission was three years, during which time a study was launched

¹ Keller, M. Alcoholism: Nature and extent of the problem, *Ann. American Acad. Political & Social Science*, 315: 1-11, Jan. 1958.

² State Board of Health of California. First Biennial Report of the Permanent Secretary, Sacramento, 1870-1871, p. 15.

³ *Ibid.*, p. 4.

⁴ A. B. 9, 1954, Special Session, California Legislature.

mainly into the research aspect of alcoholism with a limited amount of work relative to the treatment field. The commission sought the advice of consultants from the Yale Center of Alcohol Studies, and in their report to the commission this group emphasized the need for a "balanced program" of research, treatment, rehabilitation and especially evaluation of existing programs.⁵ Believing that a separate staff to carry out the program would have been impracticable, the commission contracted with existing agencies for the conduct of various aspects of the alcoholism problem.

Commission funds were used to augment the budget of an existing alcoholic treatment facility (the San Francisco Adult Guidance Center, a clinic operated by the San Francisco Health Department), and for the establishment of a research clinic at U C L A. for the study of treatment methods. Although it had been the intent of the author to have the commission establish treatment clinics throughout the State, budgetary cuts and indecision on the part of the commission as to their true role, accounted in part for dissatisfaction with the operation of the commission. Ultimately, it was the recommendation of proponents of the original commission bill that the functions of the commission be transferred to the Department of Public Health, and the commission be abolished.

Assemblyman Coolidge in the 1957 Session of the Legislature authored Assembly Bill 3117 by which the commission was abolished and the Division of Alcoholic Rehabilitation created as a new division within the Department of Public Health.⁶ The act directed the division to "engage in the treatment and rehabilitation of alcoholics by contract with local agencies or otherwise." This directive is further expanded by another section of the code which specifically grants the power to contract with local government and non-profit organizations. In addition, the division is directed to "investigate and study all phases of the rehabilitation and prevention of chronic alcoholism and other excessive uses of alcohol, and to periodically report its findings thereon to the Governor and the Legislature together with its recommendations."

The division continued the program that it inherited from the commission for the 1957-58, 1958-59 and 1959-60 fiscal years. It may be divided into three broad categories: treatment and rehabilitation, study and investigation, education, information and training. The division's budget for the first year was \$705,000, \$688,000 for the second and for 1959-60, although the preliminary budget proposal requested additional funds for specific programs including the establishment of a new clinic, it was decided at budget hearings that these programs involved policy questions which should be decided by the Legislature. Therefore, the division budget as presented to, and passed by the Legislature, in the amount of \$681,000, again provided only for a continuation of the old commission program.

Bills increasing the division's program were, however, introduced by individual legislators. One, by Assemblyman Grant of Long Beach, would have provided for a new clinic in Long Beach. Another, (A B 1752) by Assemblyman Bradley of San Jose, incorporated the recom-

⁵ Lipscomb, Wendell R., "Alcoholism, The Chronological Background Leading to California's Present Program," *California Medicine*, 88: 137, Feb. 1958.

⁶ Health and Safety Code, Sec. 427-427.4.

mendations of the division's Advisory Committee for matching funds. Mr Bradley's bill provided that local clinics established after January 1, 1960, could be financially assisted by the State in an amount not to exceed 50 percent of the total cost of such programs, and that existing clinics would be assisted by the State on the same basis as the present until July 1, 1964. After that date, state assistance would not exceed 50 percent of the total cost of the program.

CALIFORNIA'S ALCOHOLIC REHABILITATION PROGRAM

*Division of Alcoholic Rehabilitation
Department of Public Health*

One of the long-range goals of the State Department of Public Health is to make the treatment of the alcoholic a part of the professional skills within each community, and alcoholism programs a part of community health services ¹

TREATMENT AND REHABILITATION

Pilot clinics for the treatment and rehabilitation of alcoholics are presently operated by six communities under contract to the State in San Diego, Los Angeles, Stockton, Sacramento, San Jose and Oakland. In San Francisco, the Adult Guidance Center has been treating alcoholics since 1951, and the state contracts with the city and county to provide reimbursement of costs for certain professional positions and the operation of special projects. Treatment also was provided in two State pilot hospitalization demonstrations, and is a secondary function of the Alcoholism Research Clinic at UCLA.

Clinic contracts call for state reimbursement of operating costs, up to a maximum amount set by the State for each community. Local governments provide housing, furnishing and maintenance. The clinics are autonomous, except by agreement to use State standards for admission procedures, makeup of caseload, scope of community activities and reporting responsibilities.

Pilot hospital treatment demonstrations were authorized by the Legislature in 1956, and were completed in 1958. Their purpose was to show that an acutely intoxicated alcoholic could be treated on the medical wards of general hospitals without restraints or special facilities. These were treatment demonstrations but also served as staff training and clinical research activities.

The division is involved in other treatment and rehabilitation services in a consultative capacity. These include treatment centers operated by voluntary organizations and rehabilitation centers operated by local governments in connection with law enforcement or mental health programs and will be covered in another section of this report.

STUDY AND INVESTIGATION

Dr. Wendell R. Lipsecomb, Assistant Chief of the Division, stated in his testimony to the committee that California leads the nation in the rate of alcoholism with approximately 600,000 alcoholics and has consistently consumed more alcohol per capita than the rest of the nation ². How much does this cost? One facet of the problem,

¹ California Department of Public Health, *Alcoholic Rehabilitation, 1954-59*, November, 1959, p. 11.

² Testimony, Hearing before Subcommittee on Alcoholic Rehabilitation, Assembly Interim Committee on Public Health, Berkeley, Nov. 18, 1959.

admissions of all alcoholic patients to State Mental Hospitals for 1959, cost the State of California \$2,243,125.³ Another way of looking at the problem for a measurement of its cost is to consider the disability insurance claims paid, even though alcoholism is infrequently used as a cause for disability claims, 1 percent of the claims for 1953 due to alcoholism was approximately \$900,000. Studies completed in the east by industrial firms who have active rehabilitation programs indicate that the average problem drinker in industry, of which there are perhaps one and three quarter million, loses about 22 days of productivity attributable to intemperate drinking. Roughly, some 30 million work days per year are lost nationally. In addition, we must look at the number of machines that are idled, the increased number of accidents and decreased efficiency.

From the public health approach, Dr. Lipscomb stated that in the most productive age bracket, that is 35 to 55, between the ages 35 to 44 cirrhosis of the liver and alcoholism combined are the fifth leading cause of death, and in the age bracket of 45 to 55, cirrhosis of the liver and alcoholism become the third leading cause of death. Without considering the arrest record, jail maintenance and the welfare costs attributable to alcoholism, it is safe to say that the price we pay for chronic alcoholism in California is running into the millions of dollars.

In concluding his testimony, Dr. Lipscomb stated:

"The orientation of Health today in the study of any mass disease, any mass illness is to take a good look at human behavior and its use of human resources and attempt to determine how that behavior itself might be a factor in the production of the disease. And certainly here with alcoholism this is very well met indeed. Here is something that does begin as a social practice and can eventuate as a disease of physical-mental complications requiring certainly the treatment of all types of specialties.

"I would like to just briefly relate to you the rationale which we are approaching. In any civilization which makes use of alcoholic beverages, apparently troubles can be anticipated. Five thousand years ago a very high civilization in Mesopotamia had to set up a whole code of laws, much as did our Legislature recently, to deal with the problem. In any given population one will find troubled individuals scattered throughout. Some of them will make use of some resource in an attempt to adjust to their problem. Certainly for some, whether he be a troubled drinker, or a troubled non-drinker, the types of behavior can lead to clinical complications, sometimes to mental illness, sometimes to cirrhosis or other types of definable medical diseases.

"We here would like to look at the populations, the community of California, would like to be able to develop tools for picking out this individual. We would like to be able to see the chronological development of his pattern in this alcohol process, would like to acquire sufficient evidence that would enable us to pick him out early so as to get him into treatment and rehabilitative facilities.

³ Letter, September 23, 1960, Statistical Research Bureau, Department of Mental Hygiene.

We would like to be able to stage his progress so that we can make use of and actually delineate those factors which appear to make for it, so they can be used as predictors, also in a given population, whether it be at the high school level, industry or wherever, to enable us to get ahead of and interrupt the process.

"Now as to just what treatment this takes. You realize there is a wide variety of treatment and rehabilitative facilities which are probably necessary. This is an illness which can be reinstituted by lack of support of the community. This is an illness that can be continued almost directly by just the attitudes of the family around the individual who is so afflicted. Part of our job and part of our orientation is an attempt to describe this, learn its chronology, and interrupt this pattern."

The Division of Alcoholic Rehabilitation training and education efforts are directed at the public, the professions, the alcoholic patient, and his family. Newspapers, radio, and television are used in community education to increase public understanding of alcoholism. Education within the professions is aimed at developing the skills necessary to deal with alcoholism. Patient and family education are functions of the community clinics, with state assistance in preparation of orientation courses, exhibits, and literature.

Division staff cooperate with national and local voluntary agencies, particularly citizens committees on alcoholism, tuberculosis and health associations, mental health societies, and professional associations representing official alcoholism programs. Other state departments and local agencies are involved in sponsorship of conferences and workshops attended by representatives of social, economic and health groups concerned with alcoholism. Consultation on alcohol education and alcoholism is offered to universities and organizations which have in-service training programs.⁴

RESEARCH

In April 1959, a \$200,000 grant from the National Institute of Mental Health was awarded to the State Department of Public Health for a three-year study to develop methods by which the habits of California's drinking population could be determined. This is the first study of its kind in the United States and should help to determine reliable information on the use of alcoholic beverages, that is, who drinks and how much. Because it is a personal kind of process, methods must be developed to provide information as to kinds, amounts, frequency and regularity of alcoholic beverage usage, the context of drinking (where, with whom and why) attitudes of drinkers relative to driving, business lunches, entertainment, etc., individual and group consequences of drinking, with special attention being given to our teenagers. Dr. Selden Bacon, Director of the Yale Center of Alcohol Studies, emphasized the importance of this kind of study in the following statement:

"One mode of attack (on the alcoholism problem), however, has hardly been tried at all; the careful, broadly oriented and disciplined collection of facts relevant to the phenomenon of

⁴ California Department of Public Health, *Alcoholic Rehabilitation, 1954-59*, November 1959, p. 64.

the consumption of alcoholic beverages. In a country such as the United States, where compilations of facts run to fantastic extremes, where surveys and analyses and score sheets are maintained on styles in women's hats, on hours of listening to radio comedians, on the length of life of baby carriages, and on taste in soft drinks and political philosophies, it is perhaps doubly surprising that a vast ignorance covers this area. Nobody knows who uses alcoholic beverages, how many, how often, how much, what, where, when, with whom, or under what conditions.

"Research studies under contract to the State Department of Public Health are as follows ⁵

<i>Type of Study</i>	<i>Agency in Charge</i>
Alcoholism Research Clinic -----	Department of Psychiatry UCLA Medical Center, Los Angeles
Adreno-Cortical Function in Chronic Alcoholics -----	Department of Physiology University of California, Berkeley
Biochemical Factors in Alcoholism* -----	Department of Physiological Chemistry UCLA Medical Center, Los Angeles
Effects of Alcohol on Neuro-endocrine Function* -----	Department of Anatomy UCLA Medical Center, Los Angeles
Alcohol Metabolism -----	Langley Porter Neuropsychiatric Institute and Department of Pharmacology, University of California Medical Center, San Francisco
Analytic Aspects of Alcohol* -----	School of Criminology University of California, Berkeley
Alcoholism and the Family -----	Department of Sociology, Anthropology and Geography, University of California, Davis "

* Study completed

Departmental supported alcoholism studies being conducted by the Study and Investigation Section of the division include:

1. Evaluate (retrospective and prospective phases of large-scale follow-up, involving nearly 1,400 alcoholic patients)

2. Etiologic (involving development of concepts and definitions, selection and screening of population at high or low risk of developing alcoholism, long-term follow-up of screened population to observe any changes)

3. Mortality (comparison of death rates, study of cirrhosis deaths, interviews with physicians on causes of death).

4. Alcohol usage study among male felons (with Department of Corrections).

⁵ California. Department of Public Health, *Alcoholic Rehabilitation, 1954-59*, November, 1959, p. 58.

FINANCING THE PROGRAM

The 1954 Legislation creating the Alcoholic Rehabilitation Commission also increased liquor license fees by 10 percent. It was the thinking of the Legislature, the liquor industry, and supporters of the bill, especially the League of Cities and the Supervisors Association, that this tax on the industry should be used for the support of a state alcoholic rehabilitation program.

Prior to 1954 all liquor license fees were returned to the city or county from which they were collected. Following the enactment of the legislation, all money collected from the fees except the additional revenue produced by the 10 percent increase goes to the cities and counties. The 10 per cent goes to the General Fund.

From time to time since the initiation of this plan other fees have been added which substantially increase the amounts allocated to the General Fund. These fees include the following: (1) 10 percent of payments made in lieu of serving suspension of license for violation of regulations, (2) service charges on denied and withdrawn applications, and (3) original fees for new on- and off-sale licenses.

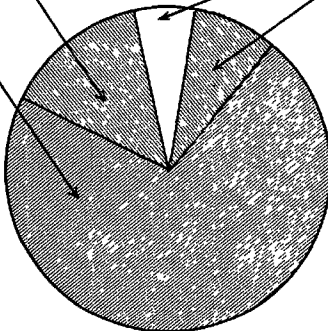
The chart shown below graphically gives the estimated revenues and allocations for the Alcoholic Beverage Control Fund for the fiscal year 1959-60. It can be seen that the 10 percent increase originally intended for alcoholic rehabilitation programs is less than half of the total amount of revenue annually going to the general fund. The table below summarizes figures for previous years.

TABLE 1
ALCOHOLIC BEVERAGE LICENSE FEES COLLECTED

<i>Fiscal year ending June 30</i>	<i>To cities and counties</i>	<i>To General Fund</i>
1959-----	\$9,576,328	\$2,340,729
1958-----	8,858,112	2,437,954
1957-----	8,399,805	2,216,393
1956-----	8,717,664	920,130
1955-----	8,834,825	378,534
1954-----	8,586,074	-

ESTIMATED REVENUES AND ALLOCATIONS FOR 1960

To cities and counties 90% liquor license fees		To General Fund *	
To counties -----	\$2,040,000	10% Liquor license fees	\$1,110,000
To cities -----	7,560,000	Miscellaneous fees	1,320,000
	<u>\$9,600,000</u>		<u>\$2,430,000</u>



Total Revenue of Alcoholic Beverage Control Fund	\$12,030,000
Liquor license fees -----	\$10,710,000
Miscellaneous fees -----	1,320,000
	<u>\$12,030,000</u>

* Allocation of revenue to General Fund

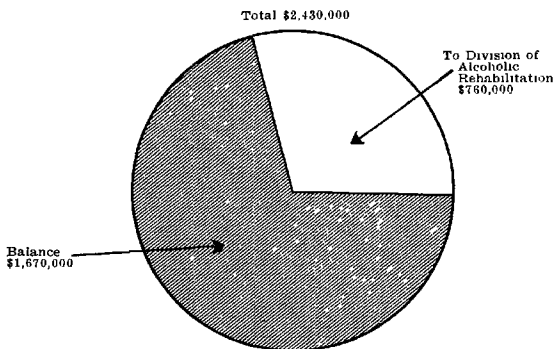


TABLE 2
ALLOCATIONS FOR STATE ALCOHOLISM PROGRAMS^a
1954-1959

	<i>Alcoholic Rehabilitation Commission</i>			<i>Dept of Public Health Budget</i>		
	1954-55	1955-56	1956-57	1957-58	1958-59	1959-60 ^b
Salaries -----	\$16,610	\$32,660	\$50,420	\$133,420	\$160,030	\$188,450
Maintenance and operation -----	9,050	13,190	29,120	24,560	70,360	77,350
Workshop on alcoholism -----	-	-	1,500	-	-	-
Yale consultants -----	3,350	-	3,270 ^b	-	800	-
Equipment -----	3,030	240	2,880	5,200	290	740
Clinic Contracts						
Alameda County -----	-	-	18,390	52,110	59,750	56,490
Los Angeles County --	-	-	8,660	39,070	59,560	86,000
Sacramento County --	-	-	-	16,610	25,000	25,000
San Diego City -----	-	-	14,120	34,900	41,180	50,120
San Francisco -----	-	40,200	50,080	50,000	65,000	65,000
San Joaquin County --	-	-	19,140	22,040	20,820	27,770
Santa Clara County --	-	-	8,670	25,000	30,420	39,780
U. C., Los Angeles --	-	18,530	48,280	70,480	79,180	93,270
Hospitalization pilot plan						
California Hospital --	-	-	2,550	3,550	-	-
Mount Zion Hospital --	-	-	-	6,420	-	-
Gordon						
(consultation) --	-	-	-	320	-	-
Perrow (report) --	-	-	-	150	-	-
Research						
State Department of Public Health						
Follow-up -----	5,570	35,430	28,290	c	-	-
Etiologic -----	-	21,050	46,430	c	-	-
Metabolism						
U. C., San Francisco --	-	11,850	14,420	23,230	30,470	28,760
Neuroendocrine						
U. C., Los Angeles -----	-	5,940	1,840	6,020	-	-
Family						
U. C., Davis -----	-	-	140	4,420	2,410	1,410
Withdrawal						
U. C., Berkeley --	-	-	14,070	15,380	16,940	19,750
Biochemical						
U. C., Los Angeles -----	-	-	1,520	-	-	-
Blood Alcohol						
U. C., Berkeley --	-	-	4,500	-	-	-
Totals -----	\$37,610	\$177,690	\$367,820	\$542,840	\$662,160	\$760,330

^a Budget for fiscal year 1959-60^b Grant from National Institute of Mental Health not included in total^c Incorporated with new Division of Alcoholic Rehabilitation activities^d California, Department of Public Health, *Alcoholic Rehabilitation 1954-59*, November, 1959, p. A-1

Budget Proposals 1960-61

The Division of Alcoholic Rehabilitation budget for 1960-61 is approximately \$750,000. The department has requested an additional \$490,000 for program increases in the following categories for the fiscal year 1960-61:

- 1 Increased cost of present services,
- 2 Expansion of present clinics and services;
- 3 Establishment of new clinics and services;
- 4 Clinic patient follow-up; and
- 5 Public information and education

At the 1959 Session of the Legislature, the Assembly Ways and Means Committee requested the Legislative Analyst to make a review of the Alcoholic Rehabilitation program conducted by the Department of Public Health. Subsequently, on September 10, 1959 the Joint Legislative Budget Committee directed the Legislative Analyst to continue the review and submit a report to the Budget Committee. The recommendations made in that report¹ are:

- 1 The original intent of the six community pilot clinics was to provide a means for evaluating methods of treatment of alcoholics so that the State and the local communities would know what the best method of rehabilitating alcoholics would be. With the present operation of the clinics, it is not possible to determine the effectiveness of the treatment being administered in any of the clinics. It is therefore our recommendation that the State Department of Public Health use funds and personnel that are presently assigned to activities in the Studies and Investigations Section of the Division of Alcoholic Rehabilitation to establish a system of evaluation and follow-up of the patients in the clinic. The staff that is presently working with the department's follow-up study could do this when the final interviews of that study are completed in 1960 or 1961.

Until such time as there is a complete evaluation of all aspects of the clinics, we do not recommend the establishment of any new clinics or the expansion of any of the present clinics.

- 2 There should be greater coordination of the clinics and uniform policies on admittance standards. Since the State reimburses the local community for 100 percent of the operating costs of the pilot clinics, it has a paramount interest in the results obtained by the clinics. Some clinics stated that it is impossible to achieve positive treatment results with non-voluntary patients, yet 40 percent of the caseload of one clinic is composed of patients referred to the clinic as a condition of probation. That clinic feels it has some success with those patients. This is the type of situation in which the State should be interested since one of the justifications for an alcoholic rehabilitation program is to reduce the costs to communities for the problems that are associated with alcoholism, such as jail commitments. If the treatment of court-referred patients can

¹ Report of the Legislative Analyst, December 8, 1959, *Alcoholic Rehabilitation Program of the California Department of Public Health*, (mimeo.)

be effective, then this should be determined and the clinics should be apprised of the situation and urged to accept such patients

- 3 We recommend the establishment of a uniform fee schedule. Some clinics have fee schedules, and some do not. When the clinics do have a fee schedule, the total amount collected by the clinic is deducted from the amount reimbursed to the clinic by the State; thus, the amount collected represents a saving for the State. Some of the clinics have established a schedule for therapeutic purposes; that is, psychologically, patients desire to contribute something in their own rehabilitation program, thus, the payment of a fee is very helpful for those patients.

Since there is no economic eligibility standard for patients, anyone may receive treatment who desires it regardless of ability to pay. Thus, it can be assumed that there will be patients who can easily pay for treatment and those who cannot pay. A uniform fee schedule should be established that can be adapted to both situations. No schedule should be adopted that would turn away patients.

- 4 Should the Legislature decide to continue the operation of present clinics and the establishment of new clinics after there is a thorough evaluation of their worth, then consideration should be given to the sharing of costs of their operation. The Legislature has established the policy of the sharing of costs for Community Mental Health Clinics when it passed the Short-Doyle Act in 1957. The State reimburses the county for one-half of the treatment costs after the county has furnished the physical facilities. San Francisco has included its alcoholic rehabilitation clinic, the Adult Guidance Center, in its total psychiatric program for reimbursement under the Short-Doyle program.

It may not be possible to include simply the alcoholic rehabilitation clinics in the Short-Doyle program since there are some limitations under Short-Doyle. Non-voluntary patients cannot be included for reimbursement. Also, the setting of the clinic under Short-Doyle must be of a psychiatric nature under the direction of a psychiatrist. If this were applied to the alcoholic rehabilitation program, whole areas of treatment might be excluded such as medical treatment of alcoholism. One of the present clinics is directed by an internist where medication is relied upon more than psychiatry.

If it is not possible to eventually include the program in Short-Doyle, we would recommend that a program of cost-sharing comparable to Short-Doyle be adopted.

- 5 Further recommendations in relation to the clinic operation are applicable to some clinics and not to others since some of the clinics are already doing these things.

- (a) Clinic staffs should be educated about the philosophy of prevention, which is a basic function of a public health agency.

- (b) A program of preventive activity should be developed which utilizes existing services such as public health nursing and county social welfare departments.
- (c) Efforts should be made to explore the possibility of increasing the number of court-referred patients
- (d) Attempts should be made to increase the interest of private physicians in the alcoholic rehabilitation program.
- (e) There should be greater application of group methods such as group psychotherapy as a means of increasing opportunities for service to patients and heightening clinic effectiveness

Whereas the Legislative Analyst in his report advocates the sharing of costs by communities, it was the intent of the author of the legislation creating the original Alcoholic Rehabilitation Commission that the 10 percent increase in liquor license fees should be used for the support of a state alcoholic rehabilitation program. Richard Carpenter, Executive Director and General Counsel of the League of California Cities expressed the views of his organization in a letter to the Committee:

"As you know, the League of California Cities was one of the principal supporters of your bills which created the Alcoholic Rehabilitation Commission and imposed an additional 10 percent liquor license fee to provide revenue with which to undertake an alcoholic rehabilitation program. Subsequently, the League supported the legislation which transferred this function to the State Department of Public Health. We were, and still are, deeply concerned about both the social and economic problems involved, as well as the extremely high percentage of arrests involving the repeated and intemperate use of intoxicating liquors. Direct municipal costs are substantial and indirect municipal costs other than law enforcement probably are even greater, e.g., fires caused by alcoholics, ambulance service and public health assistance.

"You will recall that when your bills establishing this program first were enacted, it was clearly understood that the entire revenue derived from the additional 10 percent fee would be used for alcoholic rehabilitation purposes. It also was understood that the bulk of the funds would be used for rehabilitation clinics, although adequate amounts would be available for both research and education.

"Until such time as the entire amount of revenue available for this purpose is used, matching funds should not be demanded."

In contrast to this view, H. D. Choate, M.D., Director, Department of Public Health and Welfare, County of San Mateo, wrote in a letter to the Committee:

"The principal thought that we would like to suggest for committee consideration is that legislation be introduced and supported

* Letter, December 8, 1953, Richard Carpenter, Executive Sec'y, and General Counsel, League of California Cities

* Letter, May 5, 1960, H. D. Choate, M.D., Director, Dept. of Public Health and Welfare, County of San Mateo

which would provide matching state funds to assist local communities in their attempts to reduce and control alcoholism. We, at the moment, are operating an alcoholic service which consists of six beds in the county hospital (which are constantly filled) and over 100 patients making regular visits to our outpatient alcoholic service. This is expensive for the local taxpayers, and as the main revenues from the sale of alcoholic beverages accrue to the federal and state governments, it is my feeling that the state should design some method of sharing this expense with local communities. I need not point out to a committee as familiar with the problem as you are that it is not just the single alcoholic who is expensive to the community, but all of the by-products associated with alcoholism, including high welfare costs, family disintegration, abandoned children, high police and court costs, and injuries resulting from drunken driving, as well as loss of productive time in industry due to alcoholism."

Under the clinic program, a sliding fee scale for treatment has been established, but no patient is refused service because of lack of funds. State contracts stipulate that the amount of fees collected shall be subtracted from reimbursement payments unless such funds are used to expand clinic services.

Nationally, there is a growing trend toward including alcoholism in the recognized range of public health concern. In the past 16 years at least 38 states and the District of Columbia have some type of law recognizing alcoholism as a medical problem and providing for government-financed services covering treatment, educational work, and/or research.¹⁰ State alcoholism programs are administered at present by state health departments in 16 states: California, Delaware, District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Virginia and Washington. Alcoholism programs in 21 states are operated by departments other than public health or by independent commissions. In general, the trend in the past two years appears to be the development of broad-based alcoholism programs, operating within the existing public health framework and financed by appropriations from the general revenues of the State.¹¹

¹⁰ The Annals, American Academy of Political and Social Science, Volume 315, p. 135, January 1958.

¹¹ California Alcoholism Review, Vol. 3, No. 1, Jan.-Feb., 1960, p. 7.

CLINIC REPORTING

More detailed information on the programs and activities of each of the six clinics in California may be found in the department's report, "Alcoholic Rehabilitation 1954-59" published in November of 1959. Information about the clinics and their patients taken from this same report, in brief, indicates that a total of 3,541 persons were admitted to the six pilot clinics from their opening through June 1959. Admissions began rising in 1957 during the organization period, but the number of admissions, plus readmissions, appears to have stabilized at about 400 patients per quarter. Referrals to the clinics are not established uniform procedures. Physicians, hospitals, the courts, welfare agencies or private groups all help to direct problem drinkers to the clinics. Law enforcement agencies account for about 29 percent of the referrals, but the greatest percentage, 38 percent, is by the patient himself, a friend or a member of his family.

Forty-six percent of California's adult population is in the 30- to 50-year age group, but 70 percent of the 1,729 patients on which descriptive data were collected were in this bracket. Alcoholic clinic patients are from every race and social class, every religious sect and every occupational group. Ninety-seven percent of the male patients and 94 percent of the female patients discharged by the clinics were Caucasian. One of two clinic patients was married at the time of treatment, whereas the corresponding figure for the California adult population is five out of six. The divorced-separated figure for the clinic population is 33 percent, compared with 8 percent for the population at large. Education levels paralleled that of the general population.

Unemployment was a significant factor. Forty-three percent of the males described themselves as out of work at the time of admission, and 35 percent of the females were unemployed. It should be noted that 2 percent of the males and 45 percent of the females could not be considered as a part of the labor force at the time of admission.

Occupationally, the largest percentage of patients among the employed males consisted of craftsmen (46 percent) with the balance almost equally distributed among the professional-managerial, clerical, and service-laborers. Among the female patients the most frequent occupation was housewife. Drinking was found to be a long-term problem for most with 40 percent of the males and 27 percent of the female patients reporting a personal history of heavy drinking for 16 years or more.

Treatment

Since the alcoholic rehabilitation clinics have no inpatient facilities, treatment is provided only on an outpatient basis. This includes visits for intake and diagnostic evaluation, for medical checkup and medication, and for group and individual counseling, including formal psychotherapy. Visits to the clinics average five visits per patient. Prior treatment for alcoholism was reported by 70 percent of the clinic patients,

35 percent receiving private care, 28 percent public treatment, 20 percent through Alcoholics Anonymous, and 10 percent from other groups.

Four of the six pilot clinics include psychiatric diagnosis as part of the treatment program, and a comparison of diagnoses indicates that 80 percent of the patients were suffering from personality disorders, whereas the mental hygiene clinics report only 47 percent of their patients in this classification. The *Diagnostic and Statistical Manual on Mental Disorders*, published by the American Psychiatric Association, states that personality disorders "are characterized by developmental defects or pathological trends in the personality structure, with minimal subjective anxiety and little or no sense of distress. In most instances, the disorder is manifested by a lifelong pattern of action or behavior rather than by mental or emotional symptoms."

Of the approximately 600,000 alcoholics in California it can be seen from the foregoing that only a very small group (3,541) are seeking admission to the clinics. A great deal more public education must be done before people will learn to accept alcoholism as a disease and be able to seek help without being embarrassed because of the social stigma still attached to the problem.

Arpad Kertesz, Supervising Social Worker at the Sacramento Alcoholic Rehabilitation Clinic, in his paper entitled "Treatment's Not Enough" presented at the National Conference on Social Welfare in San Francisco, May 27, 1959, stated

"The psychotherapeutically oriented treatment offered at the clinic is probably the most modern method for those who are sufficiently *well motivated* to seek help and who can accept the program. These individuals are presumably at the top of the scale of progressive deterioration so well known to workers in the field. They are 'hidden' in that they did not make themselves conspicuous through their abnormal behavior to the extent where they come in contact with the health, relief, or law enforcement agencies."

On the other hand, the alcoholic who found himself at the lower end of the deterioration scale, the one who is a public threat in one way or another and who does have the greatest impact with law enforcement, relief and health agencies, cannot be helped by the clinics if facilities are not available for hospitalization, for food and shelter and medical care. A person is reluctant to discuss his emotional problems while he is hungry or until he has a roof over his head. This points up more emphatically the need for a more comprehensive program of consultation, co-ordination, and community action. With an expanded state program, the clinic team would also be in a position to act as technical leaders in helping the community assess their resources and make recommendations for new services which would integrate the clinic into a more complete rehabilitation program.

Sacramento County ranks high in the State and nation in its incidence of alcoholism with a rate roughly twice the national rate for each year. Dr. Richard W. Finner, Director of the Sacramento Alcoholic Rehabilitation Clinic, and his staff conducted a survey for the years 1958-59, and in summary found that over half the arrests made by the police department and the sheriff's office were associated with

drinking "Had been drinking" drivers were involved in about 19 percent of the counties' automobile accidents, and in 1958 over 700 patients with some form of alcoholism had been treated in the County Hospital, and 279 were admitted to Weimar Chest Center in the same year. While each separate agency involved with alcoholism—government agencies as well as voluntary groups—does what it can, the machinery for dealing with this public health problem is clearly inadequate and improved facilities and co-ordination of effort are clearly needed. The 80 percent "white collar" group and the 20 percent "low end" group both find it difficult to obtain hospitalization or treatment. Dr. Finner in his study recommended that special attention be given local hospitals and physicians to determine what treatment facilities are actually available for those who have the ability to pay, and consideration also be given to the question of rehabilitation for the homeless, problem drinker. He questions the adequacy of halfway houses which sometimes grow haphazardly, and suggests that perhaps more complete programs in rehabilitation should be instituted at the county farms. His concluding remark is

"It is reasonable to expect that a carefully planned program would become a financial asset to the community, if we consider the number who may return to work, the increased freedom from crippling diseases, the probable reduction in criminal activities, and the lessened dependency of the problem drinker on numerous local and some state institutions. Even if such a program were realized through additional expense to the county, the increased well-being of some of its citizens might well make the investment of benefit to all."

Alcoholism in Long Beach

The need for establishment of a State Alcoholic Rehabilitation Clinic in Long Beach was forcefully brought before the committee by Dr. I. D. Litwack, City Health Officer of Long Beach.¹

Alcoholism is a major health problem in Long Beach. In a recent study it was revealed that on a given day private physicians were treating 918 patients who were alcoholics. This is a small fraction of the total number, for it is estimated that there are 11,100 alcoholics in Long Beach—8,210 of whom have physical complications resulting from the use of alcohol. Alcoholics Anonymous receive about 10 new calls for help per day, but are only able to assist 50 percent of these people. The other 50 percent urgently need facilities, which are inadequate or nonexistent. From the Long Beach Health Department's vital statistics, alcohol contributed to 51 deaths during the year 1958, and cirrhosis of the liver ranks among the 10 major causes of death in this city.

At the present time there are no inpatient services for the alcoholic in any of the local nonprofit hospitals. Chronic alcoholics are jailed and are sent to a custodial facility known as "Rancho Esperanza," operated by the Long Beach Police Department. Management of in-

¹Testimony of Dr. I. D. Litwack, Long Beach City Health Officer, before Assembly Interim Committee on Public Health, Subcommittee on Alcoholic Rehabilitation, December 15, 1958, pp. 40-46.

mates consists basically of custodial care and supervised work projects until their release. Following release, there is no planned program for rehabilitation.

The majority of alcoholics are employed and yet alcoholism is a major cause of absenteeism, accounting for 19 percent of all industrial absences. Long Beach is part of an industrial area in the State, and if these employees can be rehabilitated, not only would the individual and industry be helped, but the community also would be relieved of an added burden.

During 1958 there were 9,131 arrests related to drunkenness, giving a rate of 3,126 per 100,000 population. This poses a problem of alcoholism relating to minor crimes and points out the need for certain preventive efforts, which would benefit the individual and reduce the burden on the taxpayer.

From the foregoing it is obvious that this area presents a serious problem in the field of alcoholism in which the community and the State should have a mutual concern. Dr. Litwack concluded his remarks by stating that he felt the State has a responsibility for providing help as it has done for other localities and urged that favorable consideration be given to the following recommendations in an effort to alleviate the problem of alcoholism in the City of Long Beach:

- 1 That the State set aside adequate funds for the establishment of an alcoholic rehabilitation clinic in Long Beach with such personnel as an internist, psychiatrist, social workers, health educators, and when necessary, clinical help
- 2 That some attention be given to the alcoholic who is jailed for a short period of time; that some provision be made for him or her to be treated as a sick person. Adequate facilities in jails or hospitals are needed
3. That consideration be given to the development of a demonstration rehabilitation program for alcoholics at the present Long Beach Police Department facility known as "Rancho Esperanza." Such a program undoubtedly would reflect in savings to the taxpayer because many of the alcoholics could be rehabilitated and become productive citizens instead of repeatedly returning
- 4 That California industries be encouraged to work with local agencies in the detection, care, and rehabilitation of alcoholics
- 5 That health departments obtain financial assistance from the State to develop appropriate public health programs for community acceptance and understanding of the alcoholic; also to intensify educational efforts regarding alcohol and alcoholism in the schools, home, church and other key areas

OTHER TYPES OF TREATMENT OF ALCOHOLICS UNDER CALIFORNIA STATE LAW

Following affidavit, warrant, and apprehension, if no rehabilitation center is maintained by the county, or if the person charged does not consent to confinement in such center, he may, after hearing and examination, be committed to a state hospital for the mentally ill, a regional jail camp maintained by the Department of Corrections, an industrial farm or road camp within the county, or a branch of the county jail where inmates perform agricultural or other out-of-doors labor (See 5404, W & I Code.)

ALCOHOLICS IN STATE HOSPITALS, DEPARTMENT OF MENTAL HYGIENE

Superior court judges may commit those who drink to excess to the Department of Mental Hygiene for "placement in a hospital for the care and treatment of the mentally ill." (See 5404, W & I Code)

The attitude of judges varies on the disposition of alcoholic cases. Some judges refuse to commit for longer than a three-month period, although alcoholics can be committed for up to two years. Other judges refuse to commit alcoholics to mental hospitals if they are not psychotic. This tendency is in recognition of the weakness in the law in not requiring different treatment of psychotics and nonpsychotics, who are not differentiated in the hospitals at present.

The criteria for commitment leave much discretion to the judge and include:

- 1 Belief of the judge that the person charged is subject to inebriety in such a degree as to require custodial care and treatment
- 2 Satisfactory evidence that the person to be committed is not of bad reputation or bad character, apart from his habit for which the commitment was made, and that there is reasonable ground for believing that the person, if committed, will be permanently benefited by treatment

Since 1937 the state hospitals have been receiving and treating persons committed as alcoholics. The magnitude of the problem in more recent years is shown in the following figures ¹

TABLE 3
**PATIENTS ADMITTED AS ALCOHOLIC COMMITMENTS COMPARED TO THOSE
ADMITTED UNDER ALL LEGAL CLASSIFICATIONS SUBSEQUENTLY
DIAGNOSED AS ALCOHOLIC ***

<i>Fiscal year ending June 30</i>	<i>1949</i>	<i>1950</i>
Alcoholic commitments -----	2,338	3,825
Patients diagnosed as alcoholic -----	3,016	4,625
Total admissions -----	11,967	19,932
Percent -----	25.2	23.2

* A number of patients admitted as mentally ill commitments and voluntary admissions are subsequently diagnosed as alcoholic. Conversely, some patients admitted as alcoholic commitments are primarily diagnosed as psychotic or with other types of mental disorders.

¹ Letter, Statistical Research Bureau, Department of Mental Hygiene, September 23, 1960

The estimated average expenditure per patient based upon a median length of stay of three months is estimated at \$485 for 1959. Total expenditures for all alcoholic patients admitted during the year 1959 amounted to \$2,243,135.²

THE ROLE OF THE DEPARTMENT OF CORRECTIONS

A large number of inmates of state penal institutions are at the least problem drinkers. No estimate of the number of alcoholics can be made since inmate records are based on the offense of which the person was convicted. While there are therapy programs in the prisons, none with the exception of Alcoholics Anonymous programs, are directed specifically towards alcoholism. The Department of Health in co-operation with the Department of Corrections is now undertaking a study of 2,000 cases at the Guidance Centers at Vacaville and Chino in order to determine the relationship between the crimes committed and drinking involvement. Also, the parole agents of the department working with parolees on an individual basis may call upon local Division of Alcohol Rehabilitation clinic staffs for assistance.

The Board of Corrections is authorized to assist local governments in the planning for detention facilities, and more important, it is also authorized to promulgate standards for rehabilitative services in the field of training, employment, recreation, and prerelease activities in jails and other county and local adult facilities (Section 6030, Penal Code). Previous to enactment of this section in 1957, the board was empowered only to establish recommended minimum standards including food, clothing, and bedding, but *not* program standards.

TREATMENT OF ALCOHOLICS AT THE LOCAL LEVEL

Drunk arrests account for approximately half the total arrests for all offenses in the State.

TABLE 4³
COUNTY AND CITY JAIL BOOKINGS; TOTAL AND FOR DRUNKENNESS

Jail system	1955		
	Bookings during the year		
	Bookings, all causes, total	Drunk bookings	Percent drunk
County	235,773	100,037	42.4
City *	472,202	249,312	52.8

* Represents about 99 percent of total city jail population in the State.

Of the 100,037 county bookings for drunkenness, it was found that 10.4 percent ended in a "release when sober" without sentence. The average length of stay in jail for these 10,398 individuals was 10.5 hours. The remaining 89,639 persons with drunk bookings served sentences of varying durations, the average stay reported to be 19.1 days. This figure may be compared with the nondrunk bookings in the county jails for the same period which for the 135,736 nondrunks was reported to be 74.9 days. In the city jails, as in the county jails, the percentage of "release when sober" was small. The great majority gave sentences to at least 90 percent with a median sentence of five days. About two-

² Letter, Statistical Research Bureau, Department of Mental Hygiene, September 23, 1959.

³ The County Jails of California: An Evaluation, Part XI, Alcoholic Inmates, State Board of Corrections, June 30, 1957, p. 72.

thirds of the jails reported sentences averaging 10 days or less, and two jails reported sentences averaging more than 30 days. Oakland gave an average of 60, and Pasadena an average of 45 days.⁴

Because of the magnitude of the problem at the local level, attention should be given to the nature and adequacy of the rehabilitation programs at these levels. At present, they are minimal. Municipal Court Judge Robert Clifton of Los Angeles in his testimony presented to the Subcommittee in December 1959, stated that in 1958 there were 88,000 arrests in the City of Los Angeles for drunkenness, not including the drunk driving arrests. About five years ago the Los Angeles Municipal Court began handling drunk arrests separate from other arrests. There are from 250 to 300 people per day now handled by one judge. Some drunks, Judge Clifton testified, go into jail at a rate of 40 or 50 times a year. In many instances alcoholics are referred to the clinic or to Alcoholics Anonymous meetings as a condition of probation. The Los Angeles Police Rehabilitation Center costs the City of Los Angeles 4 million dollars per year and has a capacity for 600 patients, and is now being enlarged to 1,200. Those people who are sent to the rehabilitation clinic ordinarily go two or three times before reporting back to the judge, then, if the clinic suggests that they will benefit by the program, the judge puts them on the compulsory basis of attending the clinic for a certain period of time.

Judge Clifton, in his four and one-half years spent presiding as Judge of Division 30 of the Los Angeles Municipal Court, handling an average of 60,000 cases per year, called attention recently to what he considered his most significant conclusions on this problem.⁵

- 1 Compulsory referral to treatment facilities of alcoholics is beneficial and should be used by those who are attempting to treat or aid alcoholics or incipient alcoholics.
- 2 Emphasis should be placed on the early treatment of alcoholism.

He quotes Dr. Melvin L. Selzer, of the University of Michigan Department of Mental Hygiene, as saying:

"Permitting an alcoholic to remain unmolested in his excessive drinking—whether or not he creates a nuisance or breaks laws—is tantamount to permitting an insidious form of suicide.

"Fortunately, truth as a scientific entity has a way of ultimately manifesting itself despite the barriers humanity sometimes places in its way. Psychiatrists and public officials are gradually acknowledging the futility of efforts to rehabilitate alcoholics without some method of enforcing an initial period of abstinence and therapy. A poll of California psychiatrists showed 63 percent favor a law to commit alcoholics."

The experience of the Los Angeles "Drunk Court" on the subject of involuntary or compulsory referral of alcoholics, substantiates the theory that such treatment is often effective. In a number of cases

⁴ The County Jails of California. An Evaluation, Part XI, Alcoholic Inmates, State Board of Corrections, June 30, 1957, p. 72.

⁵ *Changed Attitudes Regarding Alcoholism*, Paper delivered by Judge Robert Clifton, L.A. Judicial District Municipal Court, April 6, 1959, before Naval Reserve Law Company, p. 2.

⁶ *Changed Attitudes Regarding Alcoholism*, Paper delivered by Judge Robert Clifton, L.A. Judicial District Municipal Court, April 6, 1959, before Naval Reserve Law Company, p. 3.

referrals to Alcoholics Anonymous were made as a basis of suspension of sentence, if the offender attended three A A meetings within a month and presented evidence of this Compulsory referral provided an introduction to the fellowship of A A groups, and although a wife may plead with her husband to attend an A A meeting, a parent, friend or employer may encourage him to go, but when a court orders him to go—he more often goes! Judge Clifton stated that the records indicate that in one year more than 1,200 persons each attended three A A meetings and brought back evidence of their attendance, in many cases with a word of thanks for the introduction.

This method of involuntary or compulsory referral to treatment facilities was also adopted to refer defendants to the State Alcoholic Rehabilitation Clinic on the basis that initial contacts on a compulsory referral would not impede the treatment of the patients.

Quoting from his report to the committee, Judge Clifton asserts:

“Los Angeles arrests total close to 100,000 per year, and these are caused by some 40,000 people, some coming through the courts time and time again, that is a lot of people, but we have some 2,400,000 residents in the City of Los Angeles alone. In other words, 40,000 were arrested but 2,360,000 were not. So, if a man is arrested once for being drunk, this is abnormal behavior. Two arrests put him more in the abnormal category and each succeeding arrest makes him stand out more and more from the normal individual *if we compare him to that individual*. And herein lies the root of much misguided work in relation to alcoholics and the neglect of those who can be helped—treated—in the early stages of their excessive drinking. We, of the judiciary, handling hordes of intoxication defendants, thousands of whom have arrest records of 50, 100, 150, 200 or even 300 arrests, have looked upon an individual with a few arrests as having no problem, or being no problem to the courts or the police. But in doing this we have compared him to the 40,000 who went through the drunk tanks, not the 2,360,000 who were not arrested. And so we have directed attention to trying to salvage those with 20, 30, 100, 200 arrests most of whom were beyond help, and waived on those who could be helped.”⁷

Needless to say, many skills will be required to separate out the simple drunk, the repeated drunkenness offender, and the sick alcoholic in the little time allotted to the courts each day to process the large number of drunk offender cases. Further, a judge may refer a patient to a rehabilitation facility, but treatment remains a determination jointly made by the potential patient and the treatment facility. The concept of compulsory referral is effective only as long as the system is properly controlled by the needed varieties of expert judgments in categorizing, selecting, and referring individuals to proper treatment.

COUNTY HOSPITALS

Alcoholics may be sent to county hospitals for emergency care or for observation as a part of court commitment procedure. There they will receive medical care but no treatment for alcoholism. Figures for

⁷ *Changed Attitudes Regarding Alcoholism*, Paper delivered by Judge Robert Clifton, L. A. Judicial District Municipal Court, April 6, 1959, before Naval Reserve Law Company, pp. 7-8.

1958 for San Francisco and Sacramento indicate that their county hospitals cared for an estimated 1,700 to 2,100, and 770 respectively

COUNTY REHABILITATION CENTERS

Counties may elect to maintain a rehabilitation center in connection with the county jail. At the present time, however, only Alameda, San Francisco, and Los Angeles have such centers. Treatment is initiated by affidavit that the person in question is subject to inebriety. The magistrate can then issue a warrant for the person's apprehension. If both the person charged and the medical examiner consent to his placement in the rehabilitation center, the judge may order him so confined without further hearing or examination for a period not exceeding one year. The person so confined, or his responsible relatives, are liable to pay for his care in accordance with their means.

INEBRIATE COLONIES

An alternative method for treating alcoholics is provided by statute but has never been carried into effect. Welfare and Institutions Code Sections 7100-7111 (enacted in 1939) provide for the establishment of inebriate colonies "to cure, rehabilitate, or make self-supporting" those alcoholics committed. Commitment takes place by the same procedure as commitment to a mental hospital.

VETERANS ADMINISTRATION HOSPITALS

Veterans Hospitals at San Fernando, Oakland, Menlo Park, Sausalito, and Livermore provide care for alcoholics.

NONGOVERNMENTAL PROGRAMS

A great number of existing programs dealing with alcoholism are nongovernmental. The most noted of these is Alcoholics Anonymous and the Salvation Army. In September 1960 a five-year \$300,000 federal grant was approved to set up research studies of alcoholics as part of the Salvation Army's rehabilitation program, with a supplemental amount from the Salvation Army of \$200,000. The project is to help the Army's Men's Social Service Center develop and evaluate both existing and new techniques for rehabilitation of alcoholics.⁵

NONGOVERNMENTAL GROUPS ENGAGED IN ALCOHOLIC REHABILITATION OR ALCOHOLISM EDUCATION IN CALIFORNIA

(Source: Division of Alcoholic Rehabilitation,
State Department of Public Health)

I. ALCOHOLICS ANONYMOUS

1. Total estimated members in California—20,000
2. Central offices
 - a. Los Angeles (Southern California) 12,500 (est.)
 - b. Sacramento (Central California) 8,000 (est.)
 - c. San Francisco (Northern California) 5,500 (est.)
3. Hospital and Institutions Committee—Northern and Southern California
4. (a) Alanon (Discussion group for families of alcoholics)—statewide
(b) Alateen group (Discussion group for children of alcoholics)—statewide

⁵ *California Mental Health Progress Bulletin*, Vol. 1, No. 5, September 1960, p. 1.

II. AFFILIATES OF NATIONAL COUNCIL ON ALCOHOLISM

1. Western region representative, Carmel (Mrs. Mary Clark)
2. Northern California
 - a. San Francisco Council, San Francisco
 - b. Santa Clara County Council, San Jose
 - c. Monterey Peninsula Committee, Carmel
 - d. Sonoma County Council, Santa Rosa
 - e. Mendocino and Lake County Council, Ukiah (organizational status)
 - f. Sacramento Committee, Sacramento (reactivation sought)
 - g. Santa Cruz Committee, Santa Cruz (organizational status)
 - h. Alameda County Committee, Oakland (organizational status)
 - i. San Mateo County, San Mateo (preliminary planning)
3. Southern California
 - a. Los Angeles Committee, Los Angeles
 - b. Pasadena Committee, Pasadena
 - c. Long Beach Council, Long Beach
 - d. San Diego Committee, San Diego (organizational status)
 - e. Santa Barbara Committee, Santa Barbara
 - f. Orange Committee, Anaheim (provisional)

III. TUBERCULOSIS AND HEALTH ASSOCIATIONS

1. State association subcommittee
2. Local associations
 - a. San Mateo County
 - b. Long Beach
 - c. Yolo County
 - d. Humboldt County
 - e. Los Angeles
 - f. Santa Clara
 - g. Sonoma County
 - h. Alameda County

IV. COMMUNITY WELFARE COUNCILS

1. Northern California
 - a. San Francisco
 - b. San Mateo
 - c. Oakland
2. Southern California
 - a. Los Angeles
 - b. San Diego

V. SOCIAL WELFARE ORGANIZATIONS—VOLUNTARY

1. Volunteers of America
 - a. Los Angeles Men's Service Club
 - b. San Francisco
2. Family and children's service agencies
3. Catholic Social Service (San Francisco, Los Angeles)
4. Jewish Family Service Agency (San Francisco, Los Angeles)

VI. RELIGIOUS ORGANIZATIONS

1. Episcopal Church—Northern California Diocese, Los Angeles Diocese
2. Methodist Board of Temperance—through community churches
3. Seventh-day Adventist Church
 - a. College of Medical Evangelists, Los Angeles
 - b. Loma Linda campus, Institute of Scientific Studies for the Prevention of Alcoholism
4. Lutheran Church in America (statewide)
5. Other denominations (Roman Catholic, Baptist, Presbyterian, etc.)

- 6 Salvation Army
 - a. San Francisco Men's Service Center
 - b. Los Angeles Harbor Lights Corps
 - c. Sacramento
 - d. Oakland
 - e. Fresno
 - f. San Jose
- 7. Rescue missions—skid row areas (San Francisco, Los Angeles, Stockton, Sacramento, Fresno)

VII. TEMPERANCE ORGANIZATIONS

- 1 California Temperance Federation (Oakland, Los Angeles)
- 2 Women's Christian Temperance Union (statewide)
- 3 Seventh-day Adventist Church (statewide)
- 4 Methodist Board of Temperance (statewide)

VIII. ALCOHOLIC REHABILITATION RESIDENCES (HALFWAY HOUSES)

- 1 Northern California
 - a. San Francisco (5)
 - b. Oakland (1)
 - c. Sacramento (2)
 - d. Monterey (1)
 - e. Modesto (1)
- 2 Southern California
 - a. Los Angeles (10)
 - b. Long Beach (1)
 - c. Pasadena (2)
 - d. San Diego (2)
 - e. Santa Barbara (2)

IX. PRIVATE FOUNDATIONS (NONPROFIT)

- 1 Northern California
 - a. California Alcoholism Foundation (Modesto)
 - b. Alcoholics Rehabilitation Association, Inc (San Francisco)
 - c. East Bay Rehabilitation Facility, Inc (Oakland, inoperative)
- 2 Southern California
 - a. Mary-Land Foundation (Los Angeles)
 - b. U and I Foundation, Inc (Los Angeles)
 - c. Crossroads Foundation (San Diego)
 - d. Pathfinders (San Diego)

X. PROPRIETARY INSTITUTIONS

(Licensed by State Department of Mental Hygiene)

Treatment of Mental Illness (Primarily for Alcoholics)

- 1. Alameda County (2)
- 2. Contra Costa County (1)
- 3. Los Angeles County (35)
- 4. Merced County (1)
- 5. Napa County (1)
- 6. Orange County (3)
- 7. Sacramento County (1)
- 8. San Bernardino County (1) (Nonprofit)
- 9. San Diego County (5)
- 10. San Francisco (1)
- 11. San Mateo County (3)
- 12. Santa Barbara County (1)
- 13. Santa Cruz County (1)

XI. BUSINESS, INDUSTRY AND LABOR ORGANIZATIONS

- 1 Licensed Beverage Industries, Inc., Los Angeles
- 2 California Wine Institute, San Francisco
- 3 Commonwealth Club of California, San Francisco
- 4 California Brewers Association, San Francisco
- 5 Personnel and Industrial Relations Assn., San Francisco, Los Angeles
- 6 AFL-CIO Regional Offices, San Francisco, Los Angeles
- 7 North American Aviation Corp., Burbank
- 8 Eastman Kodak Co., Palo Alto
- 9 Pacific Telephone and Telegraph Co., San Francisco
- 10 Lockheed Aircraft Corp., Burbank
- 11 Northrop Aircraft Co., Hawthorne
- 12 Hughes Aircraft Co., Culver City

**XII. PROFESSIONAL ASSOCIATIONS AND ORGANIZATIONS
(Independent, Nongovernmental)**

- 1 Medical and allied
 - a California Medical Association, San Francisco
 - b California Hospital Association, San Francisco
 - c California Academy of General Practice, San Francisco
 - d Western Branch, American Public Health Association, San Francisco
 - e California Tuberculosis and Health Assn., San Francisco
 - f Northern and Southern California sections, American Psychiatric Association, Oakland, Los Angeles
 - g College of Osteopathic Physicians and Surgeons, Los Angeles
 - h College of Medical Evangelists, Los Angeles
- 2 Welfare
 - a California Conference of Social Work, San Jose
- 3 Educational
 - a University of California, Berkeley, Los Angeles
 - b University of Southern California, Los Angeles
 - c Stanford University, Stanford
 - d California Congress of Parents and Teachers, San Francisco, Los Angeles

APPENDIX I

WITNESSES TESTIFYING AT COMMITTEE HEARINGS

November 13, 1959

John R. Philp, M.D., Chief, Division of Alcoholic Rehabilitation, State Department of Public Health

Wendell R. Lipscomb, M.D., Assistant Chief, Division of Alcoholic Rehabilitation, Department of Public Health

Vincent Vandrey, Information Officer, Division of Alcoholic Rehabilitation, Department of Public Health

D. M. Bassell, M.D., City Health Officer, San Jose, California

David S. Rubsamen, M.D., Director, San Francisco Adult Guidance Center

A. Alan Post, Legislative Analyst, State of California

Mrs. Trudy Balm, California Tuberculosis and Health Association

December 15, 1959

W. A. Pearson, M.D., Director, Los Angeles City Health Clinic

J. B. Askew, M.D., Director of Public Health, San Diego County

J. Howard Ziemann, Judge, Superior Court, Los Angeles, Member, Advisory Committee, Division of Alcoholic Rehabilitation

Mrs. Robley Berry, Legislative Chairman, California Congress of Parents and Teachers

Rev. William F. Copeland, Chairman, Committee on Alcoholism of the Episcopal Diocese of Los Angeles

Keith S. Ditman, M.D., Director, Alcoholism Research Clinic, U.C.L.A. Medical Center

Robert Chilton, Judge, Municipal Court, Los Angeles Judicial District

A. V. England, Chief, Division of Corrections, Los Angeles County Sheriff's Office

Maurice Goulet, President, Long Beach Council on Alcoholism

Miss Mary Clark, National Council on Alcoholism, Monterey, California

Miss Laura McLaughlin, Executive Director, Pasadena Committee on Alcoholism

Duane W. Rolofson, President, California Alcoholism Foundation, Modesto

P. R. Pat' Wigger, Founder and President, Mary Land Foundation

Mrs. Wynn Laws, Executive Director, Los Angeles Committee on Alcoholism

John Philp, M.D., Chief, Division of Alcoholic Rehabilitation, State Department of Public Health

o

ASSEMBLY INTERIM COMMITTEE REPORTS

1959-1961

VOLUME 9

NUMBER 20

**ASSEMBLY INTERIM COMMITTEE ON
PUBLIC HEALTH**

**PESTICIDE RESIDUES AND AGRICULTURAL
CHEMICALS IN FOODSTUFFS**

RESTAURANT SANITATION

VENEREAL DISEASE INCIDENCE IN CALIFORNIA

MEMBERS OF COMMITTEE

W. BYRON RUMFORD, *Chairman*

RONALD B. CAMERON, *Vice Chairman*

GLENN E. COOLIDGE

SHERIDAN N. HEGLAND

REX M. CUNNINGHAM

MILTON MARKS

CLAYTON A. DILLS

DON MULFORD

WILLIAM S. GRANT

HOWARD J. THELIN

CHET WOLFRUM

Sacramento

January 1961

Published by the

ASSEMBLY

OF THE STATE OF CALIFORNIA

HON. RALPH M. BROWN
Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON. WILLIAM A. MUNNELL
Majority Floor Leader

HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNMUS
Chief Clerk

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON PUBLIC HEALTH

December 7, 1960

HONORABLE RALPH M. BROWN, Speaker, and
Members of the Assembly

GENTLEMEN Your Assembly Interim Committee on Public Health created by House Resolution No. 326 (Assembly Journal, June 5, 1959) presents the attached report entitled "Final Report of the Assembly Interim Committee on Public Health, January 1961.

This together with reports of the Subcommittees on Air Pollution, Alcoholic Rehabilitation, Fire Protection and Residential Safety, and Radiation Protection, printed under separate cover, constitute a summary of the committee activities during the 1959-1961 interim. Included herein are reports of the committee on the subjects of Pesticide Residues and Agricultural Chemicals in Foodstuffs, Restaurant Sanitation, and Venereal Diseases.

The reports submitted contain recommendations for legislation and for continuing study of certain subjects deemed necessary by the committee.

The committee wishes to express special appreciation and thanks to our former consultant, Diana Clarkson, for the provision of much of the background information and study materials which assisted in the compilation of these reports.

Respectfully submitted,

W. BYRON RUMFORD, Chairman
RONALD BROOKS CAMERON, Vice Chairman
GLENN E. COOLIDGE
REN M. CUNNINGHAM
CLAYTON A. DILLS
W. S. GRANT

SHERIDAN N. HEGLAND
MILTON MARKS
DON MULFORD
HOWARD J. THELIN
CHET WOLFRUM

HOUSE RESOLUTION No. 326

Relative to constituting certain standing committees of
the Assembly as interim committees

Resolved by the Assembly of the State of California, as follows

1 The following standing committees of the Assembly are hereby constituted Assembly interim committees and are authorized and directed to ascertain, study and analyze all facts relating to (1) the subjects and matters assigned to them by this resolution, (2) any subjects or matters referred to them by the Assembly; (3) any subjects or matters related to (1) or (2) which the Committee on Rules shall assign to them upon request of the Assembly or upon its own initiative

- (r) The Committee on Public Health is assigned the subject matter of the Health and Safety Code and the subject matter of the healing arts in the Business and Professions Code, all uncodified laws relating thereto, and other matters relating to the public health

2 Each of the above committees shall consist of the members of the Assembly standing committee on the same subject for the 1959 Regular Session. The chairman and vice chairman shall be the chairman and vice chairman of the standing committees. Vacancies occurring in the membership of the committee shall be filled by the appointing power.

3 Each committee is authorized to act during this session of the Legislature, including any recess, and after final adjournment until the commencement of the 1961 Regular Session, with authority to file its final report not later than the fifth calendar day of that session. All reports shall be printed out of the funds allocated to said committee and shall be in the form prescribed by the Rules of the Assembly and the Committee on Rules.

4 Each committee and its members shall have and exercise all the rights, duties and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly and of the Standing Rules of the Assembly as they are adopted and amended from time to time at this session, which provisions are incorporated herein and made applicable to this committee and its members.

5 Each committee has the following additional powers and duties:

- (a) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies and reports to the committee as will best assist it to carry out the purposes for which it is created.

- (b) To co-operate with and secure the co-operation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this resolution and to direct the sheriff of any county to serve subpoenas, orders and other process issued by the committee.

- (c) To report its findings and recommendations to the Legislature and to the people from time to time and at any time, not later than herein provided.

(d) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution.

6 No subcommittee chairman shall be appointed by the chairman of any interim committee or otherwise except upon prior written consent of the Committee on Rules or the Speaker.

7 No consultants, staff members, or other employees may be employed by any interim committee except upon prior written approval of the Committee on Rules.

8 No contracts for goods or services or otherwise may be negotiated or entered into by any interim committee without the prior written approval of the Committee on Rules.

9 No committee or any member or employee thereof may travel outside the State on committee business without the prior written consent of the Committee on Rules or the speaker in each case.

10 Within 30 days after the adoption of this resolution, each interim committee shall file with the Rules Committee a proposed work schedule program report setting forth the specific matters it is contemplated the committee shall study and report upon, which program may be supplemented from time to time, and which report shall also contain the personnel or staff needed for said committee and the estimated expenses of said committee for the period June 19, 1959 to March 19, 1960.

11 In order to prevent duplication and overlapping of interim studies between the various interim committees herein created, no committee shall commence the study of any subject or matter not specifically authorized herein or assigned to it unless and until prior written approval thereof has been obtained from the Committee on Rules or the Speaker.

12 Each interim committee shall file with the Assembly a brief general preliminary or progress report of its activities on or before the twentieth calendar day of the 1960 Budget Session of the Legislature.

13 Each interim committee shall file its final report with the Assembly on or before the fifth calendar day of the 1961 Regular Session of the Legislature.

14 The sum of four hundred fifty thousand dollars (\$450,000) or so much thereof as may be necessary is hereby made available from the Contingent Fund of the Assembly for the expenses of the above committees and their members and for any charges, expenses or claims they may incur under this resolution. The Committee on Rules shall allocate from the above sum to each committee created by this resolution such amount as the Committee on Rules from time to time deems appropriate and sufficient to carry out the duties assigned to each such committee. After allocations have been made by the Committee on Rules to a committee pursuant to this resolution, the Committee on Rules shall not thereafter reduce or revert any funds or portions thereof so allocated. The original amount so allocated shall be for expenses for the period June 20, 1959, to March 20, 1960. Funds not to exceed the amount so allocated shall be paid from the said Contingent Fund and disbursed,

after certification by the Chairman of the respective committees, upon warrants drawn by the State Controller upon the State Treasurer.

By authorization of the above resolutions, the Assembly Rules Committee by letter dated July 24, 1959, allocated the sum of \$20,000 to the Assembly Interim Committee on Public Health to finance the committee operations from July 1, 1959 through March 20, 1960. For the period March 21 through December 31, 1960, an augmentation of \$22,000 was approved by the Rules Committee on April 11, 1960.

INTRODUCTION

The Assembly Interim Committee on Public Health, authorized by House Resolution No. 326, 1959, organized into working subcommittees during the 1959-61 interim to study the variety of subjects referred to it by the 1959 Legislature.

The subcommittees, their members and the public hearings held by each subcommittee are listed here.

<i>Subcommittees and Members</i>	<i>Dates of Hearings</i>	<i>Location</i>
<i>Air Pollution</i> -----		
Ronald Brooks Cameron, Chairman		
Clayton Dills		
Milton Marks		
Don Mulford		
W. Byron Rumford		
Chet Wolfrum		
<i>Alcoholic Rehabilitation</i> -----		
	November 13, 1959	Berkeley
	December 15, 1959	Los Angeles
Glenn E. Coolidge, Chairman		
Ronald Brooks Cameron		
Rex M. Cunningham		
Clayton A. Dills		
Sheridan N. Hegland		
Milton Marks		
Howard J. Thelin		
<i>Environmental Safety</i> . ---		
Clayton M. Dills, Chairman		
Rex M. Cunningham		
Sheridan N. Hegland		
W. S. Grant		
Howard J. Thelin		
<i>Fire Protection and Residential</i>		
<i>Safety</i> -----		
	November 4, 1959	Berkeley
	December 18, 1959	Los Angeles
Don Mulford, Chairman		
Rex M. Cunningham		
W. S. Grant		
Sheridan N. Hegland		
W. Byron Rumford		
Chet Wolfrum		
<i>Pesticide Residues and Agricultural</i>		
<i>Chemicals in Foodstuffs</i> -----		
	July 20, 1960	Sacramento
(Full Public Health Committee)		

Radiation Protection----- August 18, 19, 1960 Los Angeles
October 6, 7, 1960 Sacramento
November 15, 16,
1960 Los Angeles

W Byron Rumford, Chairman
Ronald Brooks Cameron
W S Grant
Milton Marks
Don Mulford
Howard J Thelin
Chet Wolfrum

PESTICIDE RESIDUES AND AGRICULTURAL
CHEMICALS IN FOODSTUFFS

PESTICIDE RESIDUES AND AGRICULTURAL CHEMICALS IN FOODSTUFFS

COMMITTEE INTEREST

The development and use of agricultural chemicals and pesticides is of major importance to the agricultural economy of California. This committee is concerned with the chemical residues in food products and their significance to the public health and safety.

AJR 2, introduced during the 1960 Session of the Legislature requested the US Food and Drug Administration to announce analytical methods and their sensitivities on which zero tolerances or "no residue" usage are based. This measure was referred to the Assembly Interim Committee on Public Health, and a hearing was held in Sacramento July 20, 1960, at which representatives of state and federal agencies and agricultural industries presented testimony.

FINDINGS

1 There is adequate existing legal authority vested in each of the agencies involved to fully protect the public from residual contamination by agricultural chemicals or pesticides.

2 Confusion has arisen over interpretation of zero tolerances vs. no tolerances but can be resolved by further clarification of the law and regulations.

3 In spite of obvious merits of new laws controlling the presence of added chemicals in foods, complex interrelationships between the programs of the Departments of Agriculture and Public Health, as well as with their federal counterparts, have resulted.

4 The recent incidences causing public concern relative to cancer producing additives in food products have accelerated a program of education in the proper use, as well as the benefits and hazards, of agricultural chemicals by County Agricultural Commissioners, the University of California, the federal and state government agencies, and various segments of the agricultural, entomological and chemical industry.

5 A co-ordinated effort has been undertaken to adopt parallel tolerances for federal and state regulations to facilitate movement of merchandise interstate.

CONCLUSIONS

1 That a continuing study of agricultural chemicals as they are used in the growing and processing of foodstuffs be conducted by the Legislature in view of the ever changing technological developments in this field.

2 That the sum total of benefits to the people of this State resulting from the use of agricultural chemicals is in terms of hundreds of

millions of dollars per year coupled with the preservation of a more healthful, insect free, pattern of outdoor living

3 That stringent legal restrictions and public resistance to the proper utilization of agricultural chemicals may seriously hamper adequate research and development of pesticides by industry. Therefore, further research either by the University of California or an impartial research organization is needed to meet the obligations and the responsibility implied in the existing laws to safeguard the public health

Recent State Actions

Food Additive Amendment—California has a Pure Foods Act which is virtually identical to the federal law. The California law was amended in 1959. Pertinent sections are 26465-66, 26470-71, and 26542-1 of the Health and Safety Code.

Assembly Joint Resolution No. 2, 1960 Regular Session, relating to pesticidal residue in agricultural products and requests the United States Food and Drug Administration to announce analytical methods and their sensitivities on which zero tolerances are based, was referred to the Assembly Interim Committee on Public Health for study.

The 1960 Legislature augmented the budgets of both the Department of Agriculture and the University of California with respect to spray residue research and enforcement programs. An augmentation of \$144,276 was made for the Department of Agriculture, and \$171,476 to the university.

The State Department of Agriculture under date of August 2, 1960, issued an announcement No. EP-105, on the subject of regulations concerning spray residue as follows:

'NOTE: Pursuant to hearing, tolerances and exemptions have been established for pesticide chemicals in or on produce which conform so far as possible, with like tolerances established under provisions of the Federal Food, Drug and Cosmetic Act on produce in interstate commerce.'

Discrepancies which had existed relating to dairy products have now been resolved by the adoption of the following sections:

"Section 2490.99 establishes the tolerance for all pesticides in milk and cream at zero.

"Section 2490.100 establishes the tolerance for DDT in or on produce sold for feeding dairy animals at 0.5 part per million."

The regulations were filed with the Secretary of State on July 29, 1960, and became effective on August 29, 1960.

Governor's Special Committee on Public Policy Regarding Agricultural Chemicals

Governor Brown appointed a 15-member public policy committee to survey the use of agricultural chemicals in food on June 23, 1960. The committee was directed to establish clear consistent public policy relating to the use of pesticides and chemical residues. The first meeting of the committee was held on July 14 in Sacramento. The Governor has requested a final report from the committee by January 1, 1961.

The following are members of the committee:

Chairman: Dr. Emil M. Mink, formerly Professor of Food Technology and Microbiology, University of California, and now Chancellor of the Davis Campus at Davis.

Secretary: William E. Warne, Director, California Department of Agriculture, Sacramento

Dr. Charles E. Hine, Toxicologist, City and County of San Francisco and Professor of Pharmacology, University of California Medical School, San Francisco

Louis A. Rozzoni, President, California Farm Bureau Federation, Berkeley

George A. Gooding, Vice President, California Packing Corporation, San Francisco

Dr. Elwyn Turner, Health Officer of Santa Clara County, Santa Clara

Dr. Clinton Thienes, Toxicologist and Professor of Toxicology, University of Southern California School of Medicine, San Marino

Dr. Daniel Aldrich, Dean of College of Agriculture and member of State Board of Agriculture, Berkeley

Dr. Ralph C. Teall, Vice Chairman of the Council of the California Medical Association, Sacramento

Dr. Wendell Griffith, Chairman, Department of Physiological Chemistry, School of Medicine, University of California, Los Angeles

John Watson, President, State Board of Agriculture, Petaluma

Dr. Agnes Fay Morgan, Emeritus Professor of Nutrition, University of California, Berkeley

Dr. Rosemarie Ostwald, Associate in Nutrition, Department of Nutrition, Agricultural Experiment Station, University of California, Berkeley

Mrs. Helen E. Nelson, State of California Consumer Counsel, Sacramento

Dr. Malcolm H. Merrill, Director, State Department of Public Health, Berkeley

California is a Major User of Agricultural Chemicals

California leads the nation in cash income from agriculture and uses about one-fifth of all agricultural pesticides. The quantity and quality of agricultural crops with the use of chemicals becomes even more important when we recognize the State's rapid increase in population resulting in the loss of much of our land use for agricultural purposes. Increased productivity is brought about by:

- 1 Scientific use of fertilizers
- 2 Use of chemicals to keep food crops free from infestation by insects and contamination by rodents
- 3 Use of chemicals to control insects and animals which transmit disease to humans or interfere with human comfort

Dr. John Swift, Extension Entomologist, University of California, Berkeley, in his testimony before the committee stated:

"This improvement in production has been brought about by several factors such as improved seed and fertilizing practices, better equipment, etc., but the single most important factor has been the use of pesticides. Since 1945 when DDT, 2,4-D and other chemicals became available for use, great production increases have occurred in most crops."

Nematode control in certain parts of the San Joaquin Valley has increased the yield of cotton up to one bale (500 pounds) per acre. Alfalfa seed production has increased 144 percent since DDT and other chemicals have been used in pest control. In the years 1944 to 1952, onion production rose from 250 sacks per acre to 375 sacks; potatoes increased from 150 bushels per acre to 250 bushels; tomatoes rose from

6 tons to 10 tons per acre, and milk production increased from 4,700 pounds of milk per cow to 5,300 pounds per cow in this period.¹

An indication of the extensive use of agricultural chemicals is that almost all crops grown in the State are treated with pesticides, and some crops receive several treatments during the growing season. The annual *Farm Labor Report* published by the Department of Employment shows a total of 8,624,101 acres of land were under cultivation during 1959. Mr. William E. Warne, Director of the State Department of Agriculture, testified that 7½ million acres were treated by commercial agricultural pest control operators with one or several of the 14,867 registered pesticide products. Some acreages were duplicated and were treated more than once.

In addition, it is estimated that farmers treated five million acres with their own equipment and labor. These figures represent acre treatments, that is, a 100-acre farm treated three times would be reported as 300 acres. Therefore, the total acreage reported is greater than the almost nine million acres of cropland under cultivation. In 1959 California produced a total of 1,925,135,000 tons of fruit, nuts, vegetables and field crops—the highest on record.²

Care is Needed to Insure Their Safe Use

The development and introduction of many new pesticide chemicals since World War II focused attention on the need for control to protect against possible misuse. When improperly used, pesticides may be left as harmful residue on the plants, and such contamination of raw agricultural commodities and food-stuffs may be deleterious to human health. Mention should also be made of other possible dangers from their misuse. These include adverse effects of broad-scale application to wildlife populations, the possibilities of acute poisoning of domestic animals and humans during application of pesticides, spray and dust drift problems which may damage neighboring crops, and the emergence of strains of organisms resistant or tolerant to control measures.

Public fear and confusion has resulted from recent publicity about pesticides and food additives and actions of the federal government. One of the most publicized incidences was the confiscation by the Federal Food and Drug Administration of about 3,000,000 pounds of cranberries because it was found they carried residue of a carcinogenic weed killer (Aminotriazole).

Mr. McKay McKinnon, Jr., Director of San Francisco District, Food and Drug Administration, Department of Health, Education and Welfare, answered the committee's query by relating some of the factors leading up to the confiscation.³

1. Aminotriazole, which is a very effective weed killer, used in 1957 in the northwest to produce about 3,000,000 pounds of cranberries, was not registered with the U.S. Department of Agriculture for use for such purpose, nor for any food crop.

¹ Testimony, Dr. John Swift, Extension Entomologist, University of California, before Assembly Interim Committee on Public Health, Hearing, July 20, 1960, pp. 46 and 47.

² Table 11, Annual Farm Labor Report, State Department of Employment, August, 1960, p. 6.

³ Testimony, McKay McKinnon, Jr., Director, San Francisco District, Food and Drug Administration, Department of Health, Education and Welfare, before Assembly Interim Committee on Public Health, Hearing July 20, 1960, pp. 32-35.

2 This agent was used during the growing season, and at time of harvest it was discovered that without loss of chemical identity the Aminotriazole had translocated into the cranberries from the areas where it had been applied

3 Section 402 of the Food, Drug and Cosmetic Act, passed in 1938, forbids the addition of deleterious materials and poisons to food. Such agents may be added but only under specific sanctions through the establishment of tolerances or the sanctions extended by the Miller Food Additives Amendment.

4 Growers conducted studies and produced data which indicated that if Aminotriazole were used as a weed killer on cranberry bogs not more than 10 days after harvest there would be no detectable residue of Aminotriazole in the next crop, and on that basis the Secretary of Agriculture in 1958 registered Aminotriazole for this purpose.

5 Studies to determine the safe level of use for this chemical were necessarily conducted, and early in 1959 the results were submitted to the U.S. Food and Drug Administration. They were evaluated under the Miller Amendment and it was found that of the several levels of feed of Aminotriazole to test animals, the Aminotriazole produced cancer in the test animals at the lowest level fed, i.e., at a level of 10 parts per million.

6 The U.S. Food and Drug Administration would grant no tolerance for Aminotriazole under the Miller Amendment, and declared a zero tolerance for this agent.

7 The cranberries containing Aminotriazole which were found in California were seized and destroyed by court order by the United States Marshal.

8 Action was not taken under the Food Additives Amendment but under the general Section 402, which has not been changed once since the law was passed in 1938, forbidding the addition of deleterious materials and poisons to food.

FEDERAL LAWS

Insecticide, Fungicide and Rodenticide Act, 1947

This act, designed to control the marketing of pesticide chemicals moving in interstate commerce, stipulates the type of labeling required on such products.

Registration of Economic Poisons Requires the registration of economic poisons which move in interstate commerce intended for use as insecticides, fungicides, rodenticides, herbicides, nematocides, plant regulators, defoliants and desiccants. Registration is a device to bring the economic poison to the attention of the Department of Agriculture and furnishes an opportunity to correct faulty labeling, but does not indicate the department's approval or recommendation.

Analyzing and Testing The Department of Agriculture collects, analyzes and tests economic poisons to determine whether or not they are meeting the requirements of the act.

FOOD, DRUG, AND COSMETIC ACT

The Miller Pesticide Residue Amendment, (Public Law 83-518) 1954

This amendment requires the pretesting of a pesticide chemical before it can be used on food crops. It establishes a procedure for setting tolerances for pesticide residues which may remain on raw agricultural commodities when they are shipped. The manufacturer must provide the department with scientific data relative to the product's usefulness in agriculture as well as its toxic effects on laboratory animals. From this data and their own research the Federal Food and Drug Administration sets a tolerance on the maximum amount of residue which may remain in or on the food crop when it enters interstate commerce. The tolerance for all chemicals for which a specific level is not established is zero. Foods bearing more than the established tolerance are subject to seizure, and persons responsible for the excessive residue are subject to fine.

The Food Additives Amendment (Public Law 85-929) 1958

This amendment requires manufacturers to conduct tests of food additives not generally recognized as safe, to prove they are safe *before* being put in the food supply rather than being proved harmful *after* being put in the food supply. Prior to the amendment the F D A could not prohibit the use of a questionable or untested chemical until it could be proved deleterious in court.

One of the difficulties which has arisen in enforcement of the Miller Amendment is the establishment of other than finite tolerances. When zero tolerances are established for a given pesticide on a particular commodity and use of the pesticide on the commodity is legally permitted, the amount allowed is determined by the sensitivity of the analytical method. Exemptions from the necessity of a tolerance are also pronounced by the Food and Drug Administration. Still another category, "no tolerance," which means that to date no tolerance has been petitioned or established, is permissible but can be interpreted to be the same as a zero tolerance.

Misunderstanding is greatest on foods said to comply with the zero tolerance in that they may be thought to be safer than the foods complying with a finite tolerance, such as one part per million or five parts per million. Testimony presented indicated that if the pesticide can be used safely, it is possible to ascribe a finite and safe tolerance of its residue, however small this may be, but never zero.

A summary⁴ given by Willard E. Baier, Manager of the Research Department, Sunkist Growers, outlines his thinking on the Miller amendment.

- "1 The Miller amendment provides for safe use of necessary pesticides
- "2 Safe use as so provided accrues from the basic requirement of thorough pretesting before new pesticides may be offered commercially

⁴ Testimony, Willard E. Baier, Manager, Research Dept., Sunkist Growers, before Assembly Interim Committee on Public Health, Hearing, July 20, 1960, p. 107.

- "3 Agriculture is vitally interested in the continuous functioning of this basic concept or spirit of the law, that is, predetermination of safety
- "4 Pretesting, applied in this way, determines whether a material can be safely used and only if it can be so used is it permitted
- "5. If permitted, finite tolerances, not zero tolerance, should be established for all foods which have any direct or indirect contact with the pesticide in question
- "6 Zero tolerances are ambiguous, unenforceable, are not possible of compliance, encourage misrepresentations and generally are destructive to the purpose and spirit of the Miller amendment "

STATE LAWS

Agriculture Code

1. The Spray Residue Article (Secs 1010-1014)

Setting Tolerances The Director of the Department of Agriculture may establish tolerances for any pesticide chemical if it is found (1) useful for production or marketing of a produce and (2) not deleterious in amounts below the tolerance to human or animal health. The Bureau of Chemistry which administers this article states that in enforcement of the law, it analyzes approximately 250 samples a month of produce offered for sale in wholesale and retail markets

2. The Economic Poisons Article (Secs 1061-1079)

This article controls the entry of all economic poisons into the market and requires registration by the department before it can be offered for sale in the State. Registration is denied if the economic poison is adulterated, misbranded, valueless, detrimental to vegetation, except weeds, domestic animals or to the public health and safety when properly used

Licensing provisions require each manufacturer, importer or dealer in economic poisons to obtain a license by means of application for each labeled product and payment of fees. A statement of the brands, trademarks and kinds of economic poisons intended to be manufactured or sold, the correct name and percentage of each active ingredient, and the total percentage of each active ingredient as well as the inert ingredients are required. We are aware of no other class of product that is required to have the label fully reviewed before the product can be sold

3. Agricultural Pest Control Business Article (Secs 160 1-160 95)

Pest Control Licenses All agricultural pest control operators who apply pesticides for hire must be licensed

County Pest Control Registration Each operator must register with the county agricultural commissioner in each county in which he operates

Aerial Crop Dusting Certificates Before a person can operate an airplane in the business of pest control, he must obtain a certificate. Certificates are granted following passage of a written examination, supervised experience and the completion of an apprenticeship

Importance of Licensed Operators It is estimated that such operators treat two-thirds of all acreage that is treated with pesticides in California. Approximately 1,300 firms now hold agricultural pest control operators' licenses. Four-fifths of all the acres treated by licensed operators are treated by aircraft. About 200 firms use aircraft in their businesses, and about 450 pilots and 150 apprentice pilots are certified.

4. Injurious Materials Article (Sees 1080-1080.9)

Defined Certain types of agricultural chemicals (as found and determined by the director to be injurious to persons, animals or crops other than the pest or vegetation it is designed to control) are placed by the director in a special injurious materials category. The director after investigation and hearing adopts special rules and regulations regarding their uses. Pesticides classified as injurious materials can only be bought and applied by persons holding a permit from the county agricultural commissioner.

HEALTH AND SAFETY CODE

Pure Foods Act

Food additive amendments—California has a Pure Foods Act which is virtually identical to the federal law. Pertinent sections of the act are Sections 26465-66, 26470-71 and 26512.1

These amendments accomplish far-reaching changes in the method of controlling the presence of added chemicals in foods, and bring about new interrelationships among the programs of the Departments of Agriculture, Public Health and their federal counterparts. The basic concept of these amendments is that chemicals in foods may serve a useful purpose. Consequently, regulations governing tolerances for the planned use of chemicals must be established.

Dr. H. C. Pulley, Assistant Director of the State Department of Public Health, in his presentation² before the committee stated:

"In spite of their obvious merits, these changes result in a number of extremely critical problems that demand immediate attention. For example, Section 26465 of the California Pure Foods Act defines food additive so as to exclude a pesticide chemical on a raw agricultural product. Consequently, the Department of Public Health cannot adopt a tolerance for a raw agricultural product and this becomes the duty of the Department of Agriculture. On the other hand, the Federal Food and Drug Administration has adopted tolerances on raw agricultural products for a large number of chemicals and has furthermore adopted regulations which provide the following:

"(1872 A) *Pesticide chemicals in processed foods*

"Section 121.2. When pesticide chemical residues occur in processed foods due to the use of raw agricultural commodities that bore or contained a pesticide chemical in conformity with an exemption granted or a tolerance prescribed under section 408 of the act, the processed food will not be regarded as adulterated so long as good manufacturing practice has been followed in removing any residue from the raw agricultural commodity in the processing (such as by peeling or washing) and so long as the concentration of the residue in the processed food when ready to eat is not greater than the tolerance prescribed.

² Paper, *Health Implications of Agricultural Chemicals*, Malcolm H. Merrill, M.D., prepared for Special Committee on Public Policy Regarding Agricultural Chemicals, meeting in Sacramento, July 14, 1960.

for the raw agricultural commodity. But when the concentration of residue in the processed food when ready to eat is higher than the tolerance prescribed for the raw agricultural commodity, the processed food is adulterated unless the higher concentration is permitted by a tolerance obtained under section 409 of the act. For example, if fruit bearing a residue of seven parts per million of DDT permitted on the raw agricultural commodity is dried and a residue in excess of seven parts per million of DDT results on the dried fruit, the dehydrated fruit is adulterated unless the higher tolerance for DDT is authorized by the regulations in this part. Food that is itself ready to eat, and which contains a higher residue than allowed for the raw agricultural commodity, may not be legalized by blending or mixing with other foods to reduce the residue in the mixed food below the tolerance prescribed for the raw agricultural commodity.

"Section 26542.1 of the California Pure Foods Act, moreover, prevents the Department of Public Health from adopting standards higher than those of the Federal Food and Drug Administration, and Sections 26470 and 26471 provide in effect that until a tolerance has been set, the tolerance for a chemical additive in a food is automatically zero."

Closely integrated co-ordination by the Department of Public Health, the Department of Agriculture and the Federal Food and Drug Administration is called for if any solution to the complexity of these amendments is to be found for the protection of the consumer and the food industry.

Occupational Hazards

Many agricultural chemicals are potentially toxic and pose a risk to those who manufacture, formulate, transport, apply and under certain conditions harvest crops treated with defoliants, weed killers, pesticides and insecticides. Chemicals may enter the body in different ways, but absorption through the skin and the lungs are most common, causing dermatitis, severe systemic poisoning, and at times long-term chronic illnesses which are difficult to detect and diagnose. In California, in 1959, nearly 1,100 incidences of illness among workers were attributed to agricultural chemicals.⁶ Forty-five percent were recorded as systemic poisoning, 41 percent as dermatitis, 14 percent as respiratory and other conditions. Over 40 percent of all of the illnesses and over 80 percent of the systemic poisonings were attributed to the highly toxic organic phosphate group of chemicals. Provision for the safe handling of these chemical substances depends upon a thorough understanding of the potential danger of these agricultural adjuncts by the manufacturer, the industry and the worker. Educational programs as to the proper precautions, safe working conditions, and basic information are carried on extensively by the Departments of Industrial Relations, Public Health and Agriculture, and the University of California, as well as various segments of the chemical industry.

C. O. Barnard, Executive Secretary of the Western Agricultural Chemicals Association, at the hearing of the committee on July 20, 1960, stated:

"... we started a program of orientation for farmers, pesticide salesmen, farm managers, superintendents or anyone else who was

⁶ Ibid.

interested in the proper use of pesticides. The first of those orientation programs was presented at the new Fresno State College last September. We had in attendance about 600 farmers, pesticide salesmen, etc. In these meetings we use the personnel of the University of California Experiment Station and others who have particular experience in the sale and use of pesticides. The second meeting was held in February on the Davis campus of the university under the sponsorship of Western Agricultural Chemicals Association and the Entomological Club of Northern California. The third one will occur on February 15, at the State College at San Luis Obispo, and the fourth one probably will be held in Southern California under the general sponsorship of our association and the Citrus Experiment Station."

Robert J. Beckus, Manager of the Dairy Institute of California, testified:

"The industry through the co-ordinated efforts of processor field services, producer associations, the University of California Extension Service, the State Department of Agriculture, together with city and county health departments and the county commissioners, has conducted an all-out educational program directed at the individual dairyman's use of agricultural chemicals around the premises of the dairy farm. We believe that this program has been virtually 100 percent effective in the elimination of contamination by pesticide residues which may occur as a result of the spraying of barns and livestock in insect abatement work."

*Is There a Need for Legislation?*⁷

William E. Warne, Director, Department of Agriculture, said:

"At this moment, I have no new legislation to propose. I would like to reserve the final answer to your question until after the committee that is now at work reviewing the efforts of our department and the federal public health agencies is prepared to make its report in December. It is possible that we will have something to propose at that time."

McKay McKinnon, Jr., Director, San Francisco District, Food and Drug Administration, Department of Health, Education and Welfare, said:

"The authority for regulation making appears to be adequate, but it would be highly desirable for tolerances to be parallel, particularly where a great volume of merchandise moves out of California."

Dr. H. C. Pulley, Assistant Director, State Department of Public Health, said:

"At this point the solution is not to be handled by a recommendation for legal action or for legislation covering the subject. There's a great deal of work to be done in developing standards and in evaluating the problem before we are in a position to suggest legislative action."

⁷ Testimony presented during Assembly Interim Committee on Public Health, hearing, July 20, 1960.

The grower's answer to this question was reflected in the statement of Mr. Allan Grant, First Vice President of the California Farm Bureau Federation, who said:

"More legislation, in view of the authority already resting with the Departments of Agriculture and Public Health, and with the far-reaching federal agencies, would seem unnecessary."

In view of the foregoing, the committee recommends no legislation at the present time. Many groups, including the Governor's Special Committee, are studying pesticide residues, and when their deliberations are completed, a realistic evaluation of the effects of chemicals as they relate to the public health and safety of our citizenry should be undertaken by all segments of government and industry which participate in the implementation of the rules and regulations governing agricultural chemicals.

APPENDIX I DEFINITIONS ¹

<i>Term</i>	<i>State law</i>	<i>Federal law</i>
1 Pesticide	"Pesticide" and "pesticide chemical" are defined to mean either an 'economic poison,' as defined by the Agricultural Code, or any substance which, alone, in chemical combination or formulation with one or more other substances is an "economic poison," as defined by the Agricultural Code, and which is used in the production, storage, or transportation of produce (Secs. 100 L, 100 J7, and 1010, Ag C, Sec. 26466, H & S C)	'Pesticide chemical' is defined to mean any substance which, alone, in chemical combination or formulation with one or more other substances is an 'economic poison,' within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U S C, Secs. 135-135k) and which is used for the production, storage, or transportation of raw agricultural commodities (21 U S C, Sec. 321)
2 Rodenticide ^a	None	Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents which the Secretary of Agriculture deems to be a pest (7 U S C, Sec. 135)
3 Insecticide ^a	None	Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever (7 U S C, Sec. 135).
4 Food additive	Any substance the intended use of which results or may reasonably be expected to result, directly or indirectly in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use. Excluded from the definition are	Any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown, through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use. Excluded from the definition are

	(a) A pesticide chemical in or on a raw agricultural commodity	(a) A pesticide chemical in or on a raw agricultural commodity, or
	(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage or transportation of any raw agricultural commodity	(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity, or
	(c) Any substance used in accordance with a sanction or approval granted prior to the enactment of this section at the 1959 Regular Session of the Legislature pursuant to the Federal Food, Drug and Cosmetic Act (52 Stat 1040), the Poultry Products Inspection Act (71 Stat 441), or the provisions of the Act of March 4, 1907, Chapter 2907 (34 Stat 1256)	(c) A color additive, or
	(d) Any substance used in accordance with a sanction or approval granted pursuant to the California Pure Food Act, Chapter 3 (commencing at Sec 26450), Division 21 of the Health and Safety Code Article 1 (commencing at Sec 301) of Chapter 1, Division 3 of the Agricultural Code, Article 2 (commencing at Sec 377 1) of Chapter 3, Division 3 of the Agricultural Code, or Chapter 2 (commencing at Sec 450) of Division 4 of the Agricultural Code, or Article 1 (commencing at Sec 460) of Chapter 3 of Division 4 of the Agricultural Code or Chapter 6 (commencing at Sec 560) of Division 4 of the Agricultural Code, or Chapter 7a (commencing at Sec 1081) of Division 5 of the Agricultural Code (Sec 26465, H & S C)	(d) Any substance used in accordance with a sanction or approval granted prior to September 6 1958, pursuant to the Federal Food, Drug, and Cosmetic Act, the Poultry Products Inspection Act (21 U S C 451 and the following) or the Meat Inspection Act of March 4, 1907, as amended and extended (21 U S C, Sec 321 as amended by P L 86-618, 86th Cong, S 2197)
5. Spray residue	Any pesticide chemical added to produce (Sec 1010, Ag C.).	None
6 Agricultural chemical	(Used as chapter title in code)	None

¹Source: Legislative Counsel, Opinion No 4315, Agricultural Chemicals, Pesticides and Food Additives, July 18, 1960

²These terms are covered in Sec 1061 of the Agriculture Code under "Economic Pests;" as follows: Sec. 1061. Definitions: As used in this article (a) Economic pestness includes any substance, or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all insects, fungi, bacteria, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the director may declare to be, a pest which may infest or be detrimental to vegetation, man, animals, or household, or be present in any environment whatsoever

APPENDIX II

**CONCLUSIONS AND RECOMMENDATIONS OF THE PRESIDENT'S SCIENTIFIC
COMMITTEE ON CHEMICALS IN FOODS**

The rapidly increasing number of new chemicals potentially useful in agriculture and food production demand vigilant and careful scrutiny of the compounds offered in order to safeguard the consumer from those that may present carcinogenic and other toxic hazards.

In applying the provisions of Section 409(c) of the Food Additives Amendment of the Food, Drug and Cosmetic Act, the enforcing agency must employ the "rule of reason" * based on scientific judgment in order to carry out the intent of the Congress to protect the public from the possibility of increasing cancer risks through the diet.

The definition of a carcinogen implicit in the language of Section 409(c) requires discretion in its interpretation because so many variables enter into a judgment as to whether a particular substance is or is not carcinogenic.

It is to be emphasized that the present difficulty in establishing whether there are permissible levels for certain possibly carcinogenic food additives is accentuated by the limited relevant scientific information available. From the experience obtained in animal experiments and study of humans who have been exposed to carcinogens in the course of their work such as cited above, the panel believes that the probability of cancer induction from a particular carcinogen in minute doses may be eventually assessed by weighing scientific evidence as it becomes available.

The special emphasis placed by the Congress on the protection of the public from the dangers resulting from the addition of possible carcinogens to food calls for prudent administration of Section 409(c) of the Food Additives Amendment of the Food, Drug and Cosmetic Act. Since an area of administrative discretion based on the rule of reason is unavoidable if the clause is to be workable, it is essential that this discretion be based on the most informed and expert scientific advice available. Until the causes of carcinogenesis are better understood, each situation must be judged in the light of all applicable evidence. In this way the protection of public health can best be assured.

Accordingly, the following recommendations are made:

1 That the Secretary of Health, Education, and Welfare appoint a board advisory to him to assist in the evaluation of scientific evidence on the basis of which decisions have to be made prohibiting or permitting the use of certain possibly carcinogenic compounds.

The advisory board should be composed of scientists from the National Cancer Institute, the Food and Drug Administration, the U S Department of Agriculture, and the scientists outside of government from a panel nominated by the National Academy of Sciences.

It would be the function of the board to weigh evidence and to make recommendations to the Secretary of the Department of Health, Education, and Welfare on the basis of available scientific data, both on applications for approval of new food additives and in all cases where the withdrawal of a prior approval of sanction is under consideration. The board would consider among other matters:

(a) Whether or not the tests for carcinogenicity are appropriate and reasonable,
(b) Whether the substance is or is not in reality carcinogenic as determined histopathologically or by other criteria,

(c) Whether addition of the substance to agricultural products would result in a concentration of the substance above the natural background level of such substance,

(d) What assay techniques are appropriate to determine whether a specific carcinogen is present in food.

It would also be the function of this board to review from time to time its recommendations and to modify them in the light of new scientific knowledge. Further, the board would assume the responsibility of recommending to the Secretary of Health, Education and Welfare specific research problems to be undertaken to provide necessary scientific data.

2 If existing legislation does not permit the Secretary of Health, Education and Welfare to exercise discretion consistent with the recommendations of this report, it is recommended that appropriate modifications in the law be sought.

* "Every statute must be interpreted in the light of reason and common understanding to reach the results intended by the legislature." Opinion handed down by Chief Justice Warren in *Rathburn vs U S* (355 U S 107 at 109).

3 Because of the limited scientific information available relevant to the effects of possible carcinogenic food additives, it is recommended that:

(a) Proportionately greater emphasis be placed by government agencies on the study of representative carcinogens in a variety of animal species in an attempt to define dose-response relations. It must be recognized from the very nature of such research that definitive answers useful in extrapolation to man may not be expected for many years to come. The applicability of such research to the problems discussed in this report will be furthered by studies carried out on large groups of animals.

(b) Studies be increased on the possible carcinogenic action of substances to which numbers of individuals have been regularly exposed and that these studies be related to the incidence of cancer in the exposed individuals. Retrospective studies should also be made of patients who have received a variety of chemical compounds, in the course of treatment of disease, which are subsequently suspected of being carcinogenic.

4 Research be expanded also by the Department of Agriculture, by the State Agricultural Experiment Stations, and by industry to discover additional safe and effective materials for the production and processing of foods.

RESTAURANT SANITATION

RESTAURANT SANITATION

INTRODUCTION

The Assembly Interim Committee on Public Health has maintained a continuing interest in the subject of restaurant sanitation during the 1959-1961 interim. The nature of the problem as set forth in this committee's report entitled, "Report of the Subcommittee on Restaurant Sanitation," Vol. 9, No. 13, published by the Assembly, February 1959, remains the same.

Assembly Bill 1256 introduced during the 1959 session by Assemblyman William S. Grant, which would have rewritten the 1947 California Restaurant Act, failed to receive the approval of the Legislature when it was reported out of the Senate Committee on Public Health and Safety without further action.

Subsequently, Senate Concurrent Resolution 9, passed by the 1960 First Extraordinary Session of the Legislature relating to an amendment to the Pure Foods Act (Sec. 26516.7 of the Health and Safety Code) was referred to this committee for study.

The committee has received communications during the past year from city and county health departments, industry, labor, the State Department of Public Health, the U.S. Department of Health, Education and Welfare Regional Office and others expressing interest in the reintroduction of legislation to revise the California Restaurant Act, Chapter 11, Division 21, of the Health and Safety Code. A review of the overall position preparatory to presentation of legislation was undertaken by the committee through written contact with all members of the 1958 advisory committee.

Findings of the committee enumerated in the previous report and information obtained from further investigation and research by the committee during this interim emphasize an even greater need for a new Restaurant Sanitation Act.

FINDINGS

1. *The Act Is Out-of-date*

The act today is identical to the act as it was passed in 1947. There have been no changes, additions, or corrections since that time. Several technical items relating to building standards, plumbing, and ventilation are inadequate and out of date. There is no requirement for hot water at handwashing facilities. Requirements relating to kitchen facilities are inadequate. No section of the present act contains any provision for the refrigeration of perishable foods.

2. *The Definition of Restaurant is Inadequate*

There is general agreement that the present definition of "restaurant" is inadequate because it excludes a number of different types of eating establishments.

The act defines "restaurants" as "any coffee shop, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain, and any other eating or drinking establishment which sells or offers for sale food to the public, as well as kitchens in which food or drink is prepared on the premises for sale or distribution elsewhere" (Health and Safety Code, Division 21, Chapter 11, Section 28602.)

The committee has found that the definition should be far more inclusive than it now is, and should include school cafeterias, private clubs, and catering organizations. It further believes that an adequate California act must cover itinerant restaurants, vehicles, and vending machines.

3. *It Is Difficult to Enforce*

At the present time, enforcement of the act is the responsibility of the local health departments in those cities and counties with organized health departments. In other areas of the State, enforcement is the responsibility of the State Department of Public Health.

One of the major difficulties in enforcing the present act according to the State Health Department and local health departments is that the act is ambiguous and indefinite. An example of this is the Section 28633 which requires that "All food or drink shall be so stored, displayed, dispensed, or served as to be reasonably protected from dust, dirt, flies or other contamination." Another section (28624) provides that rooms shall be "properly ventilated."

The vagueness of such terms as "reasonably protected" and "properly ventilated" makes it difficult to take action against restaurants felt by the health officer or inspector to be in violation. Health department personnel feel that more specific detail must be included in all sections of the act to enable "clear-cut enforcement."

4. *Improved Sanitation in Eating Establishments Is Necessary*

Data submitted to the committee by the State Department of Public Health indicate the number of disease outbreaks due to food poisoning during the last five years:

Year	Number of disease outbreaks due to food poisoning	Cases involved
1955	90	1,547
1956	103	2,158
1957	116	1,906
1958	132	3,797
1959	124	1,693
Totals	565	11,101

The Los Angeles City Health Department's Summary of Reported Food Poisoning Outbreaks for 1957-59 by etiologic agent and type of food is reported as follows:

TABLE I

Kind of food	Total		Staph		Salmonella ¹ undetermined		Bacterial—		Shigella ²	
	O ³	C ⁴	O	C	O	C	O	C	O	C
Meat products										
(other than pork) ..	17	237	6	19	2	64	8	169	1	3
Poultry	16	318	6	140	3	53	7	125	--	--
Pork	27	252	21	190	--	--	4	62	--	--
Condiments	8	71	1	61	1	10	--	--	--	--
Fish and shellfish	5	113	3	64	1	46	1	3	--	--
Sauce, gravy and										
dressing	8	79	4	14	--	--	3	53	1	12
Vegetables	8	60	5	47	--	--	3	24	--	--
Miscellaneous	4	46	2	6	1	2	1	38	--	--

¹ Dorland's Illustrated Medical Dictionary, 3rd edition, W. B. Saunders, 1958, defines Salmonellosis as being an infection with salmonella bacterium, a form of food poisoning due to certain species of salmonella caused by ingestion of food containing organisms or their products marked by violent diarrhea attended by cramps.

² Dorland's Illustrated Medical Dictionary also describes Shigellosis as a condition produced by infection of organisms of Shigella bacterium which are the etiological agents of bacillary dysentery in man.

³ O—Outbreak C—Cases

The department estimates that only 3 percent of all cases are reported to the department. Each year some 100,000 persons are affected with food poisoning, 35 percent or 35,000 of these outbreaks can be traced to restaurants.

The Department of Public Health reported that during 1957 a total of 101 outbreaks of food poisoning involving 1,872 cases were reported from 17 counties. These outbreaks included from 2 to 200 cases each. In one instance three outbreaks of 317 cases occurred on the same day in three separate locations—the food was obtained from a caterer.

Approximately 35 percent of the outbreaks reported in 1957 were traced to restaurants, 23 percent were traced to homes, and approximately 9 percent each to clubs and labor camps. The remaining 24 percent included driveways, institutions (schools, etc.), caterers, bakeries and delicatessens. Table II shows the number of food poisoning outbreaks by county and source of food in 1959, and Table III is a report of the outbreaks of food poisoning by type of food and etiology for California in 1959. Tables IV and V indicate the total outbreaks and cases for California during 1958 for the foregoing classifications.

Los Angeles City Health Department administers its own restaurant sanitation ordinance which contains more detailed regulations than does the state act. In their summary⁴ of reported food poisoning outbreaks during 1957-59, 37 percent of the cases reported were found in restaurants, 17.5 percent were traced to caterers, and 16 percent included homes, hospitals, jails, and airlines. The remaining 29.5 percent were traced to bakeries, markets, residences, delicatessens, with only 3 percent involving box lunch wagons.

⁴ Summary of Reported Food Poisoning Outbreaks, 1957-59, reported by George M. Uhl, M.D., Health Officer, Los Angeles City Health Department, December 8, 1959.

TABLE II
OUTBREAKS OF FOOD POISONING BY COUNTY AND PLACE OF CONTRACTION
California—1959

County ¹	Total		Public eating establishments		Private homes		Clubs and social gatherings		Hospitals, schools and other institutions		Labor camps		Other	
	Out-breaks	Cases	Out-breaks	Cases	Out-breaks	Cases	Out-breaks	Cases	Out-breaks	Cases	Out-breaks	Cases	Out-breaks	Cases
California total	124	1 693	41	297	48	295	14	551	11	262	2	113	8	75
Alameda	18	145	4	13	12	74	1	43	1	15	--	--	--	--
Contra Costa	1	15	1	15	--	--	--	--	--	--	--	--	--	--
Fresno	3	141	--	--	--	--	1	122	1	16	--	--	1	3
Los Angeles	80	876	24	106	32	191	10	295	7	152	--	--	7	72
Modoc	1	50	1	50	--	--	--	--	--	--	--	--	--	--
Orange	2	68	--	--	1	3	--	--	--	--	1	65	--	--
Placer	1	25	1	25	--	--	--	--	--	--	--	--	--	--
San Bernardino	3	10	3	10	--	--	--	--	--	--	--	--	--	--
San Francisco	3	71	2	58	1	13	--	--	--	--	--	--	--	--
San Joaquin	6	134	3	48	1	8	--	--	1	30	1	48	--	--
Santa Clara	3	60	1	5	1	6	--	--	1	49	--	--	--	--
Tulare	2	47	1	7	--	--	1	40	--	--	--	--	--	--
Ventura	1	51	--	--	--	--	1	51	--	--	--	--	--	--

¹ Only counties reporting outbreaks are listed

TABLE III
OUTBREAKS OF FOOD POISONING BY TYPE OF FOOD AND ETIOLOGY
 California—1959

<i>Food source</i>	<i>Total</i>		<i>Etiology undetermined</i>		<i>Staphylococcal toxin</i>		<i>Salmonella</i>		<i>Scombroid (Mackerel poisoning)</i>		<i>Clostridium perfringens</i>		<i>Plant poisons</i>		<i>Chemical</i>	
	<i>Outbreaks</i>	<i>Cases</i>	<i>Outbreaks</i>	<i>Cases</i>	<i>Outbreaks</i>	<i>Cases</i>	<i>Outbreaks</i>	<i>Cases</i>	<i>Outbreaks</i>	<i>Cases</i>	<i>Outbreaks</i>	<i>Cases</i>	<i>Outbreaks</i>	<i>Cases</i>	<i>Outbreaks</i>	<i>Cases</i>
Total	124	1,693	75	949	30	326	9	363	2	7	1	26	4	10	3	12
Poultry	17	426	10	241	3	55	4	130	--	--	--	--	--	--	--	--
Meat, other	30	251	21	115	7	70	1	37	--	--	1	26	--	--	--	--
Seafood	6	121	3	65	--	--	1	49	2	7	--	--	--	--	--	--
Bakery products	19	104	7	40	12	64	--	--	--	--	--	--	--	--	--	--
Salad	4	33	1	23	3	10	--	--	--	--	--	--	--	--	--	--
Other food ¹	11	190	8	118	3	72	--	--	--	--	--	--	--	--	--	--
More than one food	30	546	25	344	2	57	3	147	--	--	--	--	--	--	--	--
Poisons	7	22	--	--	--	--	--	--	--	--	--	--	4	10	3	12

¹ Includes Creamed Eggs Eggs Benedict Jack Cheese Noodles and Mexican Type Food

TABLE IV
OUTBREAKS OF FOOD POISONING BY COUNTY AND PLACE OF CONTRACTION

California—1958

<i>California total</i>		<i>Public eating establishments</i>		<i>Private homes</i>		<i>Clubs and social gatherings</i>		<i>Hospitals, schools and institutions</i>		<i>Labor camps</i>		<i>Other</i>	
<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>
136	3,797	47	410	49	301	7	213	13	2,128 *	8	409	12	336

* Includes two outbreaks—1,722 cases in state mental institution (Napa County)

TABLE V
REPORTED OUTBREAKS AND CASES OF FOOD POISONING BY ETIOLOGY

California—1958

<i>California total *</i>		<i>Unknown</i>		<i>Staphylococcus</i>		<i>Salmonella</i>		<i>Plant</i> ^b		<i>Chemical</i>		<i>Enterococcus</i>		<i>Shigella</i>	
<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>	<i>O</i>	<i>C</i>
136	3,797	65	2,180	54	827	5	110	6	11	4	25	1	586	1	58

* Exclusive of botulism

^b Poisonous mushrooms—10 cases, castor beans—1 case

What Is "Food Poisoning"?

Testimony presented by the Department of Public Health before the Senate Fact Finding Committee on Public Health and Safety on June 28, 1960, explained:

"There are in general, two types of 'food poisoning' caused by the presence of excessive numbers of bacteria in food. First is the true disease resulting from ingestion of food containing organisms which are themselves pathogenic to the human body. Second is the poisoning resulting from ingestion of food in which bacteria have produced a toxic substance, and here it is the toxin and not the bacteria themselves which cause the illness. Although these two types of situations are entirely distinct as to their modes of action on the person consuming the food, they both result from the same general set of environmental conditions and may therefore be both dealt with by one set of statutory requirements.

"Three basic conditions are necessary to the production of food poisoning of either of the types just described. They are:

- "(1) The food must be a suitable medium for the growth of the bacterial organisms,
- "(2) The food must be inoculated with the bacterial organisms,
- "(3) The organisms must have an opportunity to multiply."

Most foods contain the chemical nutrients needed for bacterial growth and since bacteria grow only in a moist medium, most foods, except highly acid foods, support bacterial growth. Foods may become inoculated with bacteria at any stage of handling, processing or storage from the persons handling the foods or the general environment. Since the organisms themselves come in most cases from the persons handling the food, those foods which in their preparation are finely divided, and mixed by hand, as in the preparation of salads or sandwich fillings, the opportunities of thorough inoculation are at the maximum. Thirdly, food poisoning bacteria grow best at about 98 degrees F. Deviation from this optimum temperature either way tends to slow or kill the growth. Therefore, for foods kept below 40 degrees F. or above 140 degrees F., multiplication of bacteria will be kept at a minimum. Time is another factor in bacterial growth. It is important to note that when cooked foods are cooling to room temperature, or refrigerated foods are warming up to room temperature, this lag is on the side of safety, whereas when warm foods which are being refrigerated, this lag must be added to the unrefrigerated time. Thus, multiplication of bacteria in food is a function of both time and temperature difference, increasing geometrically with time and inversely with the temperature difference from the optimum temperature.⁵

⁵ Source: Statement on Refrigeration of Perishable Foods prepared for the Senate Fact Finding Committee on Public Health and Safety by the State Department of Public Health.

Causes of food poisoning outbreaks as reported by the Los Angeles Health Department for the period 1957-1959 are reported as ⁶

Causes	Outbreaks	
	No	Percent
Methods of operation resulting in foods being kept at room temperatures after preparation and prior to refrigeration	29	24
Methods of operation resulting in foods being left out for extended periods of time at room temperature on display and prior to sale, service or consumption	47	37.3
Intermittent refrigeration over a period of time permitting an accumulative multiplication of pathogens or toxin	8	6.3
Defective refrigerating food service equipment	7	5.5
Defective steam tables, warming cabinets, etc	12	9.5
Food service personnel with infected cuts or burns, gastrointestinal or communicable diseases	8	6.3

5. Improper Refrigeration—Major Cause of Food Poisoning

There is general agreement that data tend to again prove that the major cause of food poisoning is bacterial growth when certain types of foods are allowed to stand at temperatures that are substantially above 50 degrees F or below 140 degrees F.

The Department of Public Health states ⁷

"There are in California four basic statutes that deal with the sanitation of food sold at retail. They are the Pure Foods Act, the Bakery Act, the Food Sanitation Act, and the Restaurant Act. All have as one of their major objectives the prevention of food poisoning, and yet until the enactment of Section 26516.7 of the Pure Foods Act at the last session of the Legislature none of these acts contained specific requirements for the refrigeration of prepared foods. All place the entire emphasis on the sanitary preparation of all food and protection of the food from subsequent contamination.

"In practice it has been possible to largely overcome this deficiency in the laws by persuasion of the proprietors of food processing establishments to practice the principles of food sanitation including proper refrigeration, in their own processing operations, but it has not been possible to generally obtain refrigeration of the finished product either during transportation or at the point of sale to the consumer.

"In the opinion of the State Department of Public Health and that of many local health officers, refrigeration of a wide variety of perishable foods is a prerequisite to sound food sanitation and the lack of refrigeration requirements constitutes probably the major defect in the four statutes above referred to. We recognize that refrigeration requirements must be based upon sound scientific principles, and that they must be practically adaptable to the wide variety of foods, trade practices, and climatic conditions in California. We believe, however, that a start should be made at the next regular session of the Legislature in requiring the

⁶ Summary of Reported Food Poisoning Outbreaks, 1957-59, reported by George M. Uhl, M.D., Health Officer, Los Angeles City Health Department, December 8, 1959.

⁷ Source: Statement on Refrigeration of Perishable Foods prepared for the Senate Fact Finding Committee on Public Health and Safety by the State Department of Public Health.

refrigeration of at least the more critical types of perishable foods for which a lengthy period elapses between preparation and consumption "

Charles L. Senn, Sanitation Director, Los Angeles City Health Department, wrote the committee, June 10, 1960

"We do believe that it will be necessary to establish some requirements on keeping foods hot or cold while in transit "

Eugene M. Howell, Public Health Engineer, County of San Mateo, in a letter dated June 10, 1960, addressed to the committee, stated

"It is sincerely hoped that by the time a bill is to be submitted to the Legislature of 1961 agreements can be formulated by all interested organizations having an interest in food sanitation that provisions should be incorporated in the bill to require adequate refrigeration for all perishable foods whether the foods are being handled in a fixed installation or itinerant installation or on mobile vehicles "

J. B. Askew, M.D., Director of Public Health in San Diego, stated in a letter dated June 3, 1960

"... however, recent studies conducted at the University of California at Los Angeles, and at San Diego, Los Angeles, and other communities throughout the State, clearly indicate the necessity for refrigeration of perishable food products in packaged form or otherwise, and whether sold from vending vehicles, restaurants, and/or other places of business "

Recommendation

The Committee recommends the enactment of a revised California Restaurant Act at the 1961 Session of the Legislature

VENEREAL DISEASE INCIDENCE
IN CALIFORNIA

VENEREAL DISEASES

SCOPE OF REPORT

The report presents a brief summary of venereal disease incidence, and the need for effective statewide co-ordination in reporting and control programs

REPORT

Of the 120,334 cases of notifiable diseases reported to the Department of Public Health in 1958, measles occurred most frequently with 36,231 cases, second in order were venereal infections with 25,267 cases. Tuberculosis took 869 lives in 1958 and remains the leading killer in the infectious disease group. Next in order is syphilis with 245 deaths.

For the past 10 years public health officials have wished that the spirochete and the gonococcus would take penicillin and die, but the fight against syphilis and gonorrhea is far from won. In a report¹ published in February 1960 entitled "*Today's VD Control Problem*," it was stated that for 1959, 8,178 cases of early infectious syphilis (an increase of 22.8 percent over 1958) were reported out of an estimated 60,000 that occurred in the United States. How many were treated without being reported is questioned, but the gap between the number of cases reported and those occurring is too great to believe that "control" can be brought about easily. The same is true of gonorrhea. 237,000 cases reported, an estimated 1,000,000 occurring.

Legislative Interest

The State Department of Public Health has been concerned with venereal disease control since the date of its inception 90 years ago. The 1917 Legislature created the Bureau of Venereal Diseases within the State Department of Public Health, and the following year when the U.S. Congress passed the Kahn-Chamberlain Act authorizing \$1,000,000 for venereal disease control for each of the fiscal years 1919 and 1920, California was one of the first states to receive federal grant-in-aid funds. Soon after World War I, and until 1937 the bureau in the state department practically starved for lack of funds, and it was not until 1947 when our present State Director of Public Health, Dr. Malcolm H. Merrill, was brought in as chief that new legislation was enacted creating the Bureau of Venereal Diseases.

In the 1957 Session, Senate Bill 379 was passed by the Legislature and repealed Division 16, Sections 21000 to 21409 of the Health and Safety Code which had established the Bureau of Venereal Diseases and placed the responsibility for the prevention and control program within the Department of Public Health (Chapter 4, Sections 3180-3229), Bureau of Communicable Diseases.

¹ Report *Today's VD Control Problem*, a Joint Statement by The Association of State and Territorial Health Officers, The American Venereal Disease Association and The American Social Health Association, February 1960.

Section 3180 states:

"Duty of state department with respect to plans for prevention, control and cure of venereal diseases. The state department shall develop and review plans and provide leadership and consultation for, and participate in, a program for the prevention and control of venereal disease"

What is Venereal Disease?

The classification "venereal disease" generally refers to the major diseases syphilis and gonorrhea.* They have in common their mode of transmission (rarely by other than direct contact with an infected person, usually through sexual intercourse), their host (believed to be exclusively the human being), and their cause (entry of a micro-organism into the body).²

The course of syphilis involves several stages or combinations of stages. In its "primary" and "secondary" stages (the most infectious period) the symptoms may be mild or never occur, and soon disappear even without treatment. In the succeeding "early late latent" stages, the disease is evident only through laboratory diagnosis. Subsequently, in the "late" stage, the spirochete, which has previously spread throughout the body and is by now lodged in one or more of the internal organs begins its terrible destruction of body tissue. If permitted to proceed untreated, syphilis may eventually result in severe disability and premature death.

Gonorrhea is a more local infectious disease. It may result in complications affecting other glands and joints, chronic infection, and other seriously incapacitating disability.

Bright spot in venereal disease control has been the reduction in admissions to mental hospitals in California for syphilitic psychoses. In 1959, of the 21,000 first admissions only 30 were attributable to this disease, and of the 37,188 residents in mental hospitals 3.8 percent or 1,416 had a history of syphilis.³ Infant mortality due to syphilis in the United States has dropped 99 percent since 1915, and blindness due to gonorrhea has been similarly reduced.

Control Programs

The State Department of Public Health in answer to a question relative to adequate control stated there were no cities, counties or other areas in our State without adequate VD control coverage.⁴ Their comment was:

"All local health departments in California are required to maintain adequate venereal disease control programs as a prerequisite to receiving state subsidy funds for public health activities. Some health departments have more effective control programs

* It also includes three less common diseases, chancroid, granuloma inguinale, and lymphogranuloma venereum. However, this report confines itself to syphilis and gonorrhea.

² Report, *Control of Venereal Disease*, Vol VIII, No. 9, Health Information Foundation, November 1959.

³ Source: Statistical Research Bureau, Department of Mental Hygiene.

⁴ Questionnaire submitted to the Department for the 1959 Joint Statement by The Association of State and Territorial Health Officers, The American Venereal Disease Association and The American Social Health Association, signed by Philip K. Condit, M.D., Consultant, State Department of Public Health.

than others but minimum basic services are provided in all areas of the State. Personnel vacancies exist in the State Health Department and the needs of the venereal disease control program could be better met if an additional staff physician and a record analyst were available for this program."⁵

Added to this statement was the answer that without federal assistance we would not have sufficient personnel. At the present time the department has on loan from the federal government a VD control consultant who works with the staff in the Bureau of Communicable Diseases to boost the treatment and reporting program in the State.

Treatment

It has become apparent that the advent of penicillin does not stop VD in the population. Communicable disease has rarely been eradicated by treatment alone, and because of the social nature of VD, eradication without some form of immunization is least likely. The challenge to health officers today is casefinding, not treatment.

VD and Transiency

In the questionnaire submitted to the State Department of Public Health for the 1959 Joint Statement, military and interstate migrant labor were noted as making special demands on the State's VD program. The State Department carries on liaison and consultative functions with the various military activities in California; some local health departments perform a similar function and others provide more direct services. Of the approximately 90,000 Mexican National contract farm laborers entering California in 1958, approximately 13,000 (14.5 percent) were diagnosed and treated for syphilis at the Farm Labor Reception Center, El Centro, California. The initial treatment program was jointly sponsored by the State, Imperial County and the U.S. Public Health Service. Blood tests are made by using a recently developed rapid serologic testing process in a laboratory set up for this purpose at the center. Braceros found infected with syphilis or other venereal disease receive appropriate treatment (usually a single injection of benzathine penicillin G) prior to leaving the Reception Center for their farm work assignment.

This was a demonstration type of program, and about one year ago, with the hearty endorsement of the State Department of Public Health, was taken over as a permanent medical screening and examination program by the U.S. Department of Labor. It is supported by the U.S. Public Health Service, Division of Foreign Quarantine.

Reporting

One of the major blocks to VD control is the limited reporting by private physicians. The lag is evidenced by the Department of Public Health in their figures for 1958⁶ which indicate that physicians reported only 29 percent of the total syphilis cases as opposed to 71 percent from health departments, clinics, hospitals and others. It is estimated that private physicians report only one out of four of the

⁵ *Ibid.*, p. 5
⁶ *Ibid.*, p. 1

early infectious cases treated by them. For the most part, their patients are not interviewed, and the sexual contacts of their patients are not brought to diagnosis.⁷ A more realistic reporting system for private physicians should be developed, and periodic surveys to measure the completeness of reporting VD cases would provide a more reliable indication of incidence and prevalence in our State.

How Old Is the VD Patient?

Reported incidence of infectious venereal disease per 100,000 population as published in the Public Affairs Pamphlet No. 292 indicate the 20-24-year-old male as having the highest rate for the United States. California figures agree.

TABLE 1⁸
REPORTED INCIDENCE OF INFECTIOUS VENEREAL DISEASE PER
100,000 POPULATION *

Male	Age Group Years	Female
1.45	0-9	5.05
7.29	10-14	29.67
464.22	15-19	374.40
1,326.05	20-24	422.66
713.96	25-29	203.03
379.74	30-34	101.62
183.34	35-39	54.05
87.83	40-44	27.70
46.65	45-49	16.84
12.21	50 & Over	4.21

⁷ Source: *Veneral Disease, Old Plague—New Challenge*, by T. Lefoy Richman, Public Affairs Pamphlet No. 292.

⁸ *Ibid.*, p. 7.

* Data for primary and secondary syphilis and gonorrhea.

TABLE II
CALIFORNIA—1958⁹

Ages	Reported by private physician		Reported by clinic, hospital and other institutions	
	Primary and secondary syphilis	Gonorrhea	Primary and secondary syphilis	Gonorrhea
All	226	2,009	587	14,029
Under 10	1	22	1	38
10	--	2	--	4
11	--	4	--	1
12	--	--	--	5
13	--	1	--	21
14	--	6	2	66
15	--	12	3	147
16	2	28	6	220
17	1	65	11	417
18	--	75	11	632
19	1	96	20	741
20-24	33	730	146	4,744
25-29	53	583	153	3,038
30-34	49	372	117	1,980
35-39	32	257	48	921
40-44	23	129	24	447
45-49	11	79	17	251
50 and over	14	88	19	176
Not stated	6	60	9	180

Totals Primary and secondary syphilis—813 (males 654, females 159)

Gonorrhea—16,638 (males 1,596, females 5,031, not stated 11)

Figures for 1960 from the Bureau of Communicable Diseases as of October 15, show a total of 6,163 cases of syphilis (1,227 primary and secondary cases) compared to 5,417 for all of 1959 (828 primary and secondary cases), and 14,746 gonococcal infections for the first 10 months of 1960 compared to 13,478 for all of 1959.¹⁰

The present public apathy and overoptimism possibly resulted from the drastic reduction in venereal disease rates during the post-World War II years due to the use of antibiotics. In California the case rate for primary and secondary syphilis for all ages reached a plateau from 1953 to 1957, but as indicated in this report even though California supports a high quality of control, there has been a rate increase of 2.96 per 100,000 in 1955 to 6.32 in 1959 for early infectious syphilis.¹¹ Recommendations¹² made by a nationwide joint committee studying venereal diseases include.

- (1) That the federal VD control appropriation for fiscal 1961 be increased by at least \$1,000,000 over the \$5,400,000 appropriated for VD control in fiscal 1960

⁹ Public Health Statistical Report, 1958, Department of Public Health, Bureau of Communicable Diseases.

¹⁰ Bulletin, Table 1. Reported cases of selected notifiable diseases, California 41st week ending October 15, 1960, Bureau of Acute Communicable Diseases, State Department of Public Health.

¹¹ Report, Today's VD Control Problem, a Joint Statement by The Association of State and Territorial Health Officers, The American Venereal Disease Association and the American Social Health Association, February 1960, p. 9.

¹² *Ibid.* pp. 24-25.

- (2) Greater participation by private physicians in VD control programs. Specifically, they recommend for fiscal 1961 an impressive demonstration of health department services to the private physician.
- (3) To be successful, the VD control effort must involve community support beyond the health department and even the private physician. Continuing high prevalence of venereal disease among teenagers and children at ever-lower ages indicates that parents and teachers especially must be brought into the control effort in responsible roles. They strongly urge that the Public Health Service work with the American Social Health Association, the National Parent-Teachers Association, the American Legion, co-ordinating bodies of the various religious groups, and other national agencies concerned with VD control and education to set up studies for determining what those roles are and how they can be implemented.
- (4) Increased attention must be given to research with particular emphasis on behavioral science, immunology, and gonorrhea diagnosis.

Recommendation-

The Committee recommends that the State Department of Public Health review the possibility of re-establishing more extensive control in the field of venereal diseases

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ON PUBLIC HEALTH

W BYRON RUMFORD, *Chairman*

SUBCOMMITTEE ON FIRE PROTECTION
AND RESIDENTIAL SAFETY

**SCHOOL FIRE PROTECTION AND
RESIDENTIAL SAFETY**

DON MULFORD, *Chairman*

REX M CUNNINGHAM SHERIDAN N HEGLAND

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COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
SACRAMENTO, November 15, 1960

HON RALPH M BROWN

*Speaker of the Assembly, and Members of the Assembly
Assembly Chamber, Sacramento*

GENTLEMEN The Assembly Interim Committee on Public Health submits the Report on School Fire Protection and Residential Safety prepared by the Subcommittee on Fire Protection and Residential Safety in accordance with House Resolution No 333 of the 1959 Session

Respectfully submitted,

W. BYRON RUMFORD, *Chairman*
Assembly Interim Committee
on Public Health

SUBCOMMITTEE LETTER OF TRANSMITTAL

November 15, 1960

HON W BYRON RUMFORD, *Chairman*

Assembly Interim Committee on Public Health

DEAR MR RUMFORD Attached is the report of the Subcommittee on Fire Protection and Residential Safety. This report is the result of testimony given at two public hearings, of the deliberations and report of the citizens advisory committee, and of other information gathered by the subcommittee during the 1959-1961 interim.

Respectfully submitted,

DON MULFORD, *Chairman*
REX M CUNNINGHAM
W S. GRANT
SHERIDAN N HEGLAND
W. BYRON RUMFORD
CHET WOLFRUM

REPORT OF SUBCOMMITTEE ON FIRE PROTECTION AND RESIDENTIAL SAFETY

INTRODUCTION

The Subcommittee on Fire Protection and Residential Safety was appointed by Assemblyman W. Byron Rumford, Chairman of the Interim Committee on Public Health, under authority of House Resolution 333, 1959 General Session. The resolution authorized the study and analysis of all facts relating to fires as a cause of accident or death. Specifically, the committee was to investigate

- (a) The causes of fires in both dwelling units and schools;
- (b) The State Housing Act¹ as it relates to fire protection and prevention

SCOPE OF REPORT

This report relates to three fields of interest

Part I School Fire Protection

Part II Residential Safety, including fire protection, as enforced by the Division of Housing

Part III Advisory Committee recommendations and proposed legislation

COMMITTEE STUDY

Two hearings were held on the subject matter. The first hearing was held in Berkeley on November 4, 1959. Testimony was confined to fire prevention and protection in schools.

The second hearing on the subject of residential fire protection was held in Los Angeles on December 8, 1959. Inasmuch as it was impossible to separate the question of fire safety from other aspects of residential safety, the subcommittee directed its principal inquiry to a general consideration of the adequacy of the State Housing Act.

Because of the complexity of such a study and because of the many technical considerations involved, an advisory committee composed of representatives of the various affected agencies of government and industry were invited to assist the committee.² Tasks assigned the advisory committee were

- (a) Examination of the State Housing Act and other pertinent laws,
- (b) Assistance in outlining reasonable research objectives and advising the subcommittee as to sources of information,
- (c) Consideration of and recommendations for proposed legislation

¹ Health and Safety Code, Division 13, Part 1, Sec. 15600 ff.

² For a list of the members of this Advisory Committee, and the organizations represented see Appendix I.

PART I

SCHOOL FIRE PROTECTION

FINDINGS

1 The State Fire Marshal after exhausting all efforts of persuasion with local agencies may proceed against school districts which fail to comply with the state fire regulations by means of injunction rather than by criminal proceedings. This permits greater latitude on the part of the trial court in setting up time limitations and for compliance in order of priority. This power of injunction should be surrounded with adequate safeguards to insure that it is not used against a school district which is proceeding in good faith to satisfy the requirements.

2 Some source of funds must be provided if the school districts are to be compelled to comply with the Fire Marshal's regulations. One source of such funds may be a provision allowing the school district to exceed the maximum school district tax by an amount equal to the cost of fire safety compliance, provided that the school district has made an attempt to obtain the funds by other means such as a bond issue, and provided further that the district can show that its finances are such that it needs the extra money.

3 Further investigation is needed respecting the charge that there is no uniformity in inspection and supervision by local officials of mechanical and electrical design features of school buildings at the construction stage.

CONCLUSIONS

1 Support and direction by the Legislature is required to facilitate action by the State Fire Marshal in co-operation with the Department of Education and the Department of Public Works in requiring school districts to comply with state fire regulations for school buildings.

2 It is recommended that this subject be made a matter for continuing legislative study.

SCHOOL FIRE PERILS

The National Scene

School Fire Safety a National Problem

The school fire is a daily occurrence on the national scene. It is estimated that in 1958 alone there were approximately 4,000 school fires resulting in a total damage of about \$23,981,000.¹ Of even greater concern than property damage, however, is the tremendous loss of life possible in a single school fire, which, if undetected in its first few minutes of development, may smother hundreds of children in smoke and fumes and surround them by flames.²

¹ "Fires and Fire Losses Classified, 1958," *Quarterly of the National Fire Protection Association*, 53 (October 1959).

² In fire tests it was discovered that untenable smoke conditions are reached in 2 to 7 minutes from the start of the fire. Los Angeles Fire Department, *Operation School Burning* (Boston, 1959), p. 26.

Chicago School Fire

The most dramatic of recent school fires occurred in Our Lady of the Angels School in Chicago on December 1, 1958.³ This holocaust was as tragic as it was spectacular, taking the lives of 92 pupils and 3 teachers.⁴ The episode proceeded in the following manner.⁵

The fire started in a pile of rubbish under the staircase on the first floor. Oxygen was supplied by the breakage early in the fire of a small window near the bottom of the stairs, and terrific heat and smoke poured up the stairway. The first two floors were protected by fire doors, which prevented loss of life there. However, since there was no door separating the third floor from the stairway, the fire spread rapidly there. Fire Commissioner Quinn described the progress of the fire on the top floor:

The fire had already gotten a good hold when it was discovered on the top floor. The roof of the building collapsed causing the top floor ceiling to cave in. This sent a blast of superheated air and gases throughout the building which snuffed out every ounce of life from those caught in the building.

The fire was actually detected at 2:25 p.m. when several students from one of the top floor rooms went to empty the waste baskets and returned to tell their teacher that they detected smoke. Rather than take the initiative, she went to another room to ask the teacher there what should be done, and the latter in turn went to the principal's office. Finding that the principal was in another part of the building, the two teachers decided to evacuate their pupils. When both classes of pupils were removed to the chapel, one of the teachers pulled the fire alarm in another part of the building.

By the time the alarm was sounded, it was 17 minutes after the detection of the fire. In the meantime, in another classroom on the top floor a teacher, upon becoming aware of the fire, opened the classroom door only to find the corridor filled with smoke. The boys in the class placed books at the cracks around the door and piled desks in front of the door. Across the courtyard the classes were unaware of the fire until the children began chanting "Fire, fire!" in order to attract attention. Trapped in the room, they heard a rush of air in the corridor and saw through the transom flames roaring along the ceiling in the hall. It was not until this time that the alarm was sounded.

In view of these events, experts have enumerated the causes for loss of life in this fire as follows:⁶

- 1 Storage of waste paper and other combustible materials in stairway enclosures and immediate vicinity of stairway
- 2 Failure of teachers to recognize and accept responsibility, together with inadequate training in proper emergency procedures

³ Joe R. Yockers, "Report of the Chicago School Fire Disaster," *California Schools*, 30 (March 1959), pp. 131-137.

⁴ *Loc. cit.*

⁵ Narrated by John G. Degenkolb, Battalion Chief, Los Angeles Fire Prevention Bureau at a hearing before the Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, November 4, 1959. Transcript, pp. 7-12.

⁶ *Ibid.*, p. 12. Yockers, *op. cit.* Chester I. Babcock, "What Progress Since the Chicago School Fire?" *Quarterly of the National Fire Protection Association*, 53 (January 1950), p. 181.

- 3 Poor fire alarm facilities
- 4 Lack of proper fire resistive enclosures and protection of openings in stairway shafts
- 5 Many layers of combustible interior finish in rooms and on corridor walls and ceilings
- 6 Substandard doors and transoms

Improvements Since the Chicago School Fire

The Chicago school fire served as a catalyst accelerating interest in school fire safety improvements throughout the nation.⁷ It is estimated that in the one year following the Chicago fire substantial fire protection improvements were made in 16,500 school buildings housing 45 million American children. Another 97 million children are attending 36,000 schools in which hazards to life and limb have been eliminated in the year 1959. These fire safety improvements are not confined to a few communities but are distributed throughout 68 percent of all communities in the United States. Table I indicates the National Fire Protection Association estimates of the physical improvements made in public school buildings in the year immediately following the Chicago fire.

In addition to these physical improvements surveys show that nearly every community has showed greater concern for better exit drills, more stringent regulation of waste disposal, inspections, and proper storage of combustible supplies. Table II enumerates the procedural and structural changes frequently mentioned in the National Fire Protection Association survey as applying to entire school systems.

While major improvements have been made to protect American children against fire hazards, a lot remains to be done in this field. Although 17 million school children are being taught under reasonably safe conditions, another 18 million are still needlessly exposed to serious fire hazards. This latter number includes 8,250,000 attending 30,000 schools where no action has yet been taken on needed improvements and 97 million in 36,000 schools where something but not enough has been done to bring the schools up to minimum life safety standards.

TABLE I
MAJOR IMPROVEMENTS IN FIRE SAFETY OF U. S. PUBLIC SCHOOL BUILDINGS
(Estimates of Physical Improvements Made Dec. 1, 1958-Dec. 1, 1959)

<i>Type of improvement</i>	<i>No. schools improved</i>
Exits	
All stairways fully enclosed	6,100
Interior exit routes added	3,700
Exterior exit routes added	5,700
Panic hardware added	13,800
Automatic sprinkler systems	
Complete systems installed	1,100
Partial systems installed	1,700
Automatic detection systems	
Complete systems installed	1,200
Partial systems installed	2,200

⁷ Unless otherwise indicated, the material in this section is from "Improvements in School Fire Protection," *Quarterly of the National Fire Protection Association*, 53 (Jan. 1960), pp. 133-154.

Combustible interior finish	
Finish removed -----	3,000
Finish coated with fire retardant paint -----	3,600
Manual alarm systems	
Interior systems improved -----	24,000
Public fire alarm boxes installed within 100 ft. of the building -----	2,800
Alarm and sprinkler systems connected to the fire department -----	5,900

TABLE II

GENERAL FIRE SAFETY IMPROVEMENTS APPLYING TO ENTIRE SCHOOL SYSTEM

Training for fire emergency	
Teacher training by fire department	
Annual custodian training by fire department	
Sparky fire departments and other children's programs started	
Custodians made members of fire departments	
Monthly custodian and teacher safety letter inaugurated	
Fire inspections	
Daily inspections by custodians of exits and rubbish disposal	
Complete monthly inspections by trained custodians	
Complete quarterly fire department inspections	
Custodian required to make inspections of certain fire hazardous conditions and report to others	
Fire exit drills	
Monthly unannounced system of fire drills instituted	
At least one fire department response annually	
Blocked exit drills held	
Room searchers and class leaders appointed	
Community co-operation and action	
Greater co-operation and communication between fire and school departments	
School safety committees established with representatives of fire departments, superintendent's staff, teaching staff, P.T.A., police department, and other interested groups	
Fire prevention, building, and building exits codes adopted	
Housekeeping improvements	
Storage of combustible materials limited	
Removal and disposal of rubbish improved	
Physical improvements (not listed in Table I)	
Exit signs and lights added	
Fire extinguishers and standpipe hoses installed	
Fire department maintenance of equipment instituted	
Smoke barriers installed in halls	
Transoms blocked up or wired glass installed	

School Fire Safety in California

As a result of the Chicago fire experience, school districts in California joined other communities throughout the nation in taking careful inventory of fire safety problems. Former State Fire Marshal, Joe R. Yockers, reports that many of the California Schools are constructed and maintained so as to be just as serious a fire hazard as was Our Lady of the Angels School in Chicago. In his own words:⁸

Following the Chicago school fire, I left immediately and went back to investigate the fire, to determine whether our standards were adequate here or whether a similar situation might occur in California. And I came back with the feeling that we had many schools in this State where a similar situation could occur. We have buildings of similar construction, and perhaps with fewer avenues of escape than were provided in this Chicago school.

⁸ Testimony of Fire Marshal Yockers before the Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, November 4, 1959, Transcript, p. 59.

Some steps have already been taken to provide better fire protection for California children, but much remains to be done. This point may perhaps best be substantiated by a brief examination of the progress made thus far in certain main areas of the State.

Unincorporated Areas

The State Fire Marshal, Chief Ray Shukraft, has compiled a partial list of schools in unincorporated areas which are failing to maintain adequate fire safety standards. These hazardous schools, distributed throughout more than half the counties of the State, are listed in Table III.

TABLE III

FIRE HAZARD SCHOOLS IN UNINCORPORATED AREAS

Compiled by Chief Ray Shukraft, State Fire Marshal

Madera County	Calaveras County
Alamo Elementary	Calaveras Joint Union High
Ash View Elementary	Wallace Joint Elementary
Kings County	El Dorado County
Corcoran Union High	Garden Valley Elementary
Pioneer Elementary	Indian Diggins Elementary
Central Union Elementary	Springvale Elementary
Merced County	Glenn County
Bryant Elementary	Union Elementary
Gustine Union High	Elk Creek High
Nevada County	Elk Creek Union Elementary
Twin Cities	Glenn Elementary
Nevada Union High	Ord Elementary
Amador County	Fairview Elementary
Aetna Elementary	Lake District
Pine Grove Elementary	Mill Street Elementary
Pioneer Elementary	Orland Joint Union High
Colusa County	Plaza Elementary
Airbuckle Joint Union High	Charles K. Price Elementary
Fresno County	Codoia Elementary
Big Creek	Kanawha Elementary
Caruthers Union High	Sycamore Elementary
Oleander Elementary	Placer County
Washington Union High	Lincoln Way
Helm Elementary	Sierra College
Kerman Union High	Blue Canyon Elementary
Laguna Elementary	New Castle Elementary
Laton Elementary	Sacramento County
Laton High	Bates Joint Union
Sanger High	Courtland High
Tranquility Union High	Rio Terra Jr. High
Solano County	McDonald Walker
Fairfield Elementary	Oakdale Elementary
Vallejo College	Shasta County
Butte County	Grant Elementary
Shasta Union Elementary	Mineral Elementary
Durham Elementary	Castle Rock Union Elementary
Canyon View	Delta Elementary
Bold Rock	South Fork Elementary
San Joaquin County	Campton Elementary
Ridge School	Slate Creek
Tracy Union High (Bonds defeated)	Fall River Joint High
Lafayette	Millville Elementary
Yolo County	Bush Bar
Winters Joint Union High	Morley Elementary
Woodland High	Happy Valley Elementary
Capay Elementary	Ono Elementary

Wildwood Elementary	Inyo County
Cedar Creek Elementary	Owens Valley Unified
Shasta Elementary	San Bernardino County
Smithson Elementary	Victory
Central Valley Union	Fawnskin Elementary
Sierra County	Calexico Elementary
Downieville Elementary	Big Pipe Unified
Siskiyou County	Big Bear Lake Elementary
Dunsmuir High	Big Bear High
Happy Camp Elementary	Cala Mesa Elementary
Bogus Elementary	Grand Terrace
Old Yreka Grammar	Orange County
Stanislaus County	Tustin Union High
Hughson Elementary	Santa Barbara County
Sutter County	Lompoc High
Franklin Elementary	Alameda County
Trinity County	Bentley
Hayfork Valley Elementary	Lincoln
Tulare County	Markham
Alpaugh Unified	Humboldt County
Porterville High	Arcata Union High
Tulare High	Eureka High
San Diego County	Santa Cruz County
Coronado High (Bonds defeated)	Santa Cruz High
James Potter	Branciforte
Fall Brook Union High	

San Francisco

The attention of the citizens of San Francisco was focused upon fire safety problems as a result of a fire June 1, 1959, in Jefferson School which, because the building was unoccupied on the weekend and without an automatic alarm system, escaped discovery for a number of hours after it was set in the principal's office by a disgruntled student.⁹ The damage was so severe when the fire was finally brought under control that the building was torn down and a new structure erected.

Before the Jefferson fire the San Francisco Fire Prevention Bureau had been working intensively on recommendations for school fire safety measures to be incorporated into San Francisco's new fire code.¹⁰ These recommendations included:¹¹

- 1 Local alarm systems;
- 2 Alarms in the school that are tied into the city's central alarm system;
- 3 Automatic fire detection equipment;
- 4 Automatic sprinklers;
- 5 Fire-safe enclosed stairways

At this writing the proposed fire code is still under consideration by the San Francisco Board of Supervisors with only the last of these recommendations incorporated into the ordinance. What permanent gains will be made to improve the school fire safety of the city rests upon the decision of the supervisors.

⁹ "Four-Alarm Fire at Jefferson School," *San Francisco Chronicle*, June 1, 1959, p. 1.

¹⁰ Testimony of Albert Hayes, San Francisco Fire Marshal and Chief of the Bureau of Fire Prevention, before the Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, November 4, 1959, Transcript, p. 102.

¹¹ "Tough Fire Rules Due for S.F. Schools," *San Francisco Chronicle*, October 14, 1959, p. 1.

Oakland

In June of 1956 the City of Oakland passed a \$40 million school bond issue which had been defeated several times in previous years. By late 1959 the Oakland Fire Department felt that most of the extreme fire hazards in the city schools had been eliminated by use of funds from the bonds.¹² An additional \$400,000 was allocated in 1959 by the Oakland Board of Education from current operating funds to provide sprinkler systems, fire escapes, etc., to provide a higher degree of fire safety for other Oakland schools.¹³

Stockton

The Fire Marshal of the City of Stockton reports that before the Chicago school fire the Stockton Fire Department was confident of its ability to handle any fire occurring while school was in session.¹⁴ After the Chicago fire, however, fire officials there realized that the basis of their confidence was reliance upon early detection and alarm and that it was possible to have a long delay such as the 17-minute delay in the Chicago fire. They therefore recognized the necessity of building fire safety into the schools. On June 19, 1959, the citizens of Stockton approved a \$4,700,000 bond issue, which included \$312,000 to provide fire protection for at least 16 older multi-storied schools.

Berkeley

The City of Berkeley has maintained an alert fire safety program. In 1948 the passage of a bond issue allowed the replacement of seven fire trap schools.¹⁵ After the Chicago school fire Chester W. Moller, Berkeley Fire Chief, called to the attention of the citizens and the school board that there remained three schools in Berkeley which were fire traps.¹⁶ The major block to solving this problem has been lack of funds. The school board introduced bond measures to the populace which were defeated twice in 1959 by a margin of 2½ per cent or about 200 votes.¹⁷ In spite of this defeat the school board took steps to make these three schools fire-safe. Other measures taken with respect to fire protection in Berkeley include:¹⁸

- 1 Fire doors and partitions together with fireproof paint on all uninstalled members have been completed at Oxford, Emerson, and McKinley Schools which are considered the most serious fire hazards.
- 2 Additional fire alarm signals have been installed at several schools in rooms where there is a high level of natural sound, e.g. shops, typing rooms, gymnasias, etc.

¹² Testimony of James J. Sweeney, Oakland Fire Chief, before the Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, November 4, 1959, Transcript, pp. 110-112.

¹³ Testimony of Dr. Spencer Benbow, Business Manager of Oakland Public Schools, before the Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, November 4, 1959, Transcript, pp. 106-109.

¹⁴ Testimony of Norman Nordwick, Fire Marshal of the City of Stockton, before the Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, November 4, 1959, Transcript, pp. 113-115.

¹⁵ Testimony of Chester W. Moller, Berkeley Fire Chief, before Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, November 4, 1959, Transcript, pp. 51-53.

¹⁶ Testimony of C. H. Weinberger, Superintendent of Berkeley Schools, before Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, November 4, 1959, Transcript, pp. 23-50.

¹⁷ *Loc cit*.

¹⁸ *Loc cit*.

- 3 Additional fire alarms are also being installed at other schools where the need appears
- 4 Fire extinguishers of the carbon dioxide-water type are being installed to meet the requirements of one extinguisher for each 2,000 square feet of classroom area
- 5 All elementary and secondary schools have fire hose reels installed as required by the State Fire Marshal
- 6 All boiler rooms, kitchens and electric panel rooms are being equipped with carbon dioxide extinguishers
- 7 All fuse panels are replaced with circuit-breaker panels
8. Wherever overloading of electrical circuits has been indicated, the wiring is replaced
- 9 Wherever possible incandescent lighting is being replaced by fluorescent lighting to relieve excess electrical load on old wiring
10. All acoustical tile now being installed is of the completely fire-retardant type.
- 11 All drapes, curtains, and similar material are fireproofed before installation and certificates are on file
- 12 Sprinklers have been installed or are being installed in five schools
- 13 Fire alarms in all schools are checked by the fire department every 60 days and by the school system electrical maintenance crews every 30 days
- 14 Every school in the Berkeley Public School System has its fire alarm system tied in with the city fire department, with the exception of Oxford School
- 15 All fire extinguishers are checked and serviced annually by school system maintenance personnel
- 16 The fire department conducts a semiannual inspection of all Berkeley schools
- 17 Monthly fire drills are conducted in every school under the direction of the fire department

These numerous improvements have been made out of the general fund of the school district. Because of the need for more income to the general fund the Berkeley Board of Education proposed an override tax measure, which was submitted to the voters of Berkeley in June of 1960 and which failed to receive the necessary majority vote.¹⁹ The failure of this proposition has necessitated drastic cutbacks in the budget of the school district, including the elimination of 41 teaching positions, at least 20 positions of maintenance personnel, the exclusion of all transportation costs, severe reductions in expenditures for capital outlay, instructional supplies, supervision, administration, and consultation.²⁰ With these reductions in expenditures necessitating the elimination of many services essential to the educational process, fire safety improvements would not be considered in current bud-

¹⁹ *Berkeley Daily Gazette*, June 8, 1960, p. 1

²⁰ *The Berkeley Review*, June 15, 1960, p. 1

etary planning were it not for the additional source of funds provided by Section 20753 of the Education Code²¹

The experience of Berkeley is an excellent example of the problem faced by many American communities today where both the school administration and the parents of the students want safe schools but where a revolt of the property owners against increased taxes prevents adequate financing of school fire protection²²

Improvements Needed Throughout the State

In spite of the fact that there has been an increased alertness to the necessity for positive fire protection programs in school districts throughout the State, more progress is needed before California children will attend safe schools

The State Fire Marshal reports that many schools have still not achieved *minimum* fire safety standards.²³ He cites five reasons for this continued lack of safety

- 1 Our increasing population has placed heavy demands upon school districts for classrooms and school facilities and has created a heavy financial burden upon all school districts
- 2 In some districts the limits of bonded indebtedness have been reached, and in others voters have turned down bond issues for the construction of new schools or remodeling of existing ones
- 3 In some areas school officials do not realize the responsibility they bear for the safety of children who are by law required to attend school
- 4 In still other areas those in the fire service have been reluctant to impose heavy financial burdens upon districts already burdened with the problem of providing money for the construction of schools to meet enrollment needs
- 5 There is no simple economical way to provide reasonable fire safety in some old multistory school buildings

ADMINISTRATION OF SCHOOL FIRE SAFETY

The Role of the State

State Responsibility

The establishment, regulation and operation of the California public schools are covered in the State Constitution¹ and the State Legislature is given comprehensive powers in relation thereto. Hence, it is contemplated that the state school system is a matter of statewide concern and not merely of local or municipal interest

This supremacy of the State in the management of the schools was established by the California Supreme Court in the case of *Hall v. City of Taft*,² which concerned a situation where a building contractor failed

²¹ Education Code Section 20753 was passed in the State Legislature in the 1960 Budget Session (A.B. No. 5; Milford Rumford). For further discussion of this measure, see the chapter on "Financing School Fire Safety," *infra*

²² There is no central record of which school districts in California have proposed bond issues. But for examples of several other districts which have serious fire hazards in schools and yet refused the passage of bond issues. See Table III, *supra*

²³ State Fire Marshal, "School Fire Safety," October 16, 1959

¹ California Constitution, Art. IX

² 47 Cal 2d 177, 302 P 2d 574 (1956)

to reach an agreement with the City of Taft as to whether the city's building code was applicable to a school building under construction within the city limits. The court upheld an injunction forbidding the city to apply its building code, reasoning that the Constitution makes the State of California sovereign in the field of education and delegates to the Legislature plenary powers. Having these plenary powers, the Legislature has pre-empted the field, and hence local governments cannot pass rules or regulations affecting school construction.³

The authority for administering and enforcing the state laws relative to school fire safety is vested in three state agencies: (1) the Department of Education, (2) the Department of Public Works, and (3) the State Fire Marshal.

State Fire Marshal

Jurisdiction of the State Fire Marshal with regard to matters of school fire safety extends to all schools in the State, public and private,⁴ and to new construction as well as existing buildings.⁵ The authority vested in the Fire Marshal to secure protection against fire hazards in the schools is very broad and comprehends minimum standards relating to the means of egress and the adequacy of exits from, the installation and maintenance of fire extinguishing and fire alarm systems in, the storage and handling of combustible or explosive materials or substances, and the installation and maintenance of appliances, equipment, decorations, and furnishings that present a fire, explosion or panic hazard.⁶

To carry out this mandate the Fire Marshal has promulgated regulations governing fire safety in schools in accordance with the California Administrative Procedure Act. These regulations appear in Title 19 of the California Administrative Code. That code adopts the Uniform Building Code of the International Conference of Building Officials as the basic building design and construction standards.⁷ With regard to facilities and equipment the code adopts other uniform standards, such as Pamphlet No. 90 of the NBFU on ventilating equipment,⁸ and the Electrical Safety Orders of the Division of Industrial Safety as to electrical wiring, fixtures and appliances.⁹ Special school hazards such as combustible decorations are governed by specification type regulations.¹⁰

Because of the new information regarding school fire safety gained from the tests made by the Los Angeles Fire Department in their experiment at Stevenson Junior High School, it is now known that many of the standards included in Title 19 are inadequate to provide a substantial degree of safety to students in school.¹¹ Because of these inadequacies the office of the State Fire Marshal is presently making a

³ A more comprehensive discussion of this case will be found in California Assembly Interim Committee on Municipal and County Government "Problems of Local Government Resulting from the Hall v. City of Taft Case Decision," Assembly Interim Committee Reports, Vol. 6, No. 3 (1959).

⁴ California Health and Safety Code, Sec. 13143.

⁵ California Administrative Code, Title 19, Sec. 74.

⁶ California Health and Safety Code, Sec. 13143.

⁷ California Administrative Code, Title 19, Sec. 6.

⁸ California Administrative Code, Title 19, Sec. 58.

⁹ California Administrative Code, Title 19, Sec. 56.

¹⁰ California Administrative Code, Title 19, Chapter 1, Subchapter 1, Article 9, Sec. 93.

¹¹ For further discussion of the Los Angeles Experiments, see page 35, *infra*, "Research and New Developments."

thorough study of all school fire regulations with a view to completely revising Title 19

The administration of the school fire safety program by the State Fire Marshal requires close co-operation with several agencies of government, including the Department of Education, the Division of Architecture and local fire departments

Because the Division of Architecture checks the structural standards of all school buildings in the State, the Fire Marshal has delegated to this agency the responsibility of checking school plans for fire and panic safety because of the division's highly qualified technical staff. For many years the Division of Architecture carried the entire burden of checking the school building plans as to fire and panic safety both as these related to earthquake hazards and as they related to the rules and regulations of the State Fire Marshal. At the present time there are deputies of the State Fire Marshal working in each of the offices of the Division of Architecture and in the division's schoolhouse section, checking fire and panic safety standards.¹²

The State Fire Marshal has a statutory directive to consult the Department of Education regarding its rules and regulations.¹³ Therefore the Fire Marshal informs the department as to proposed changes in Title 19 so that the department may make suggestions regarding those regulations which have implications for the educational values of the school design.¹⁴

In working with local fire departments to insure enforcement of the regulations of Title 19 in the local schools the Fire Marshal appoints the local fire chief as a deputy fire marshal and charges him with the duty to enforce the Fire Marshal's regulations.¹⁵ The State Fire Marshal himself is only authorized to enforce the rules and provisions of the Title 19 regulations in corporate cities or county fire protection districts upon the request of the chief fire official and the governing body.¹⁶ By delegating his authority to local enforcement officers, the State Fire Marshal is able to maintain a small staff of about 63 workers, 15 of whom are secretarial personnel and the balance are field deputies and fire prevention engineers.¹⁷

There is some question as to the adequacy of the tools of enforcement of the State Fire Marshal.¹⁸ The Fire Marshal has recommended that he be given power of injunction if he is to take any effective action in obtaining compliance with his regulations.¹⁹ In accordance with the present law the Fire Marshal has no injunctive powers under which he may close local schools which do not comply with the law. He probably does have power to cause officials of noncomplying school districts to be prosecuted criminally. The law on this point is explained in the following way by the Legislative Counsel's office:²⁰

¹² This description of operations is from the testimony of Mr. Doyt Early, Senior Architect, Bureau of School Planning, Department of Education, at the hearing of the Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, November 4, 1954, Transcript p. 93.

¹³ California Health and Safety Code, Sec. 13143.

¹⁴ Testimony of Doyt Early, *op. cit.*

¹⁵ California Administrative Code, Title 19, Sec. 15. California Health and Safety Code, Sec. 13146.

¹⁶ California Administrative Code, Title 19, Sec. 13.

¹⁷ Testimony of the State Fire Marshal, *op. cit.*, p. 88.

¹⁸ *Ibid.*, p. 86.

¹⁹ Testimony of Joe R. Yockers, *op. cit.*, p. 86.

²⁰ Legislative Counsel's Opinion, No. 1684, February 9, 1960, by Ray H. Whitaker, Deputy, requested by Assemblyman Don Mulford.

Under Sections 13145 and 13146 of the Health and Safety Code the State Fire Marshal and the chief of any city or county fire department or fire protection district are authorized to enforce such regulations (made by the Fire Marshal) and under Section 13109 of the code such officials may enter any buildings, other than dwellings, for the purpose of enforcing such regulations.

However, the only express penalty for violation of such regulations is provided by Section 13112 of the code, which makes the violation of such regulations by any person a misdemeanor, and, in our opinion, this criminal penalty would apply only to the operators of private schools and not to officials operating public schools (see Sec 19, H & S C, *People v Continental Casualty Insurance Co* (1935), 118 Cal App. 2d 133, 134).

In the case of school districts, Section 15501 of the Education Code provides as follows:

"15501 If the supervisor of health or any school district notes any defect in plumbing, lighting, or heating, or any other defect in the school building which tends to make the building unfit for the proper housing of the children, he shall at once make a detailed report to the governing board of the school district.

"If within 15 days after he has filed this report, he finds that the board has made no provision for the correction of the defect, he shall at once report the defect to the county superintendent of schools who shall under the provisions of Sections 15851 to 15856, inclusive, proceed to have the defect corrected."

It is possible that if the supervisor of health of a school district has noted, or been notified of, a defect in a school building of the district which constitutes a violation of the state fire regulations and refuses or wilfully neglects to make the required report, he could be prosecuted for his refusal or neglect to make the report (see Sec 1002, Ed C, Sec 1222, Gov C). By the same token perhaps the county superintendent of schools and the governing body of the school district could be prosecuted for refusal or neglect to proceed to have the defect corrected. However, it should be noted that the requirements of Section 15851 to 15856, inclusive, of the Education Code to correct defects only apply if the cost of repairs does not exceed \$50 and there is a sufficient amount of money in the treasury to the credit of the district, and do not apply at all to the districts governed by a city or city and county board of education. There is, however, no provision of which we are aware that imposes any criminal liability upon any officer or employee of the public schools for violations of the state fire regulations in public school buildings.

Thus, we believe it is clear that there is no statutory authority for any of the state or local fire officials to summarily close a school (or any other building subject to the state fire regulations) for a violation of such regulations.

Nor is there any express statutory procedure provided under which such officials may cause an action to be brought to accomplish such closure. Conceivably such officials could seek to have the maintenance of a school (or other building subject to the state fire regulations) which violated such regulations enjoined or

abated as a public nuisance (see Secs. 3479, 3480, and 3494, Civ. C., Sec. 731, C C P., *People v. Oliver*, 86 Cal App 2d 885, 889), or as against public policy (C C P. 526, 27 Cal Jur 2d p 132).

Also, since it would appear that compliance with the state fire regulations, by both private and public schools, is an act which the law specially enjoins (see Secs. 13112 and 13143, H & S C.), the state or local fire officials might seek a writ of mandate to compel compliance with such regulations (see Sec. 1085, et seq. C C P.).

However, according to the information available to us, none of the above types of remedial action has ever been attempted by the State Fire Marshal. We have no information as to whether a city fire chief has attempted any of such actions, however, it would appear doubtful. Furthermore, none of these actions specifically provides for the closing of a school, so that even if any of such actions should lie, whether or not the judgment would have the effect of causing the closure of a school would depend upon the specific terms of the judgment.

Up to this time the State Fire Marshal has been working on a co-operative basis with local fire officials, and they in turn with local school districts, in order to bring schools up to adequate fire safety standards. But it is felt by these fire officials that stronger methods are needed to achieve the necessary improvements since the school officials, already pressed by financial problems, are naturally reluctant to turn money from educational services to provide for building improvements. The delicate political problems involved in this question are indicated by the following interchange between Assemblyman Don Mulford and former State Fire Marshal, Joe R. Yockers.²¹

Mr. Mulford: Here in Berkeley there has been much controversy about the fire traps in the city. In your judgment when or if at all should these schools be closed when it is recognized and prove in the mind of responsible authorities that the lives of school children are in danger? This is a point of particular interest to me.

Mr. Yockers: It's a question that is awfully difficult to answer.

Mr. Mulford: Do you feel they should be allowed to remain open when they are fire traps, or supposed to be, in the opinion of experts?

Mr. Yockers: In my opinion, no.

Mr. Mulford: Then you think they should be closed when there is a safety factor?

Mr. Yockers: I do, but I think we have to think in terms of the overall state problem, and were I to all at once close all of the schools that possessed a greater than normal hazard, let's say, in California, we would put hundreds of thousands of children out of school.

Mr. Mulford: What I was trying to get at, what is the alternative with this compromise on safety, because in the final analysis that is what it is?

²¹ Testimony of Joe R. Yockers, op. cit., pp. 85-86.

Mr. Yockers I think we are rapidly coming to the point where we are going to have to start closing schools if something isn't done . I can't bring myself to believe that we should go out and in every school where we find a fire hazard in it to close it, because such a program would soon be thrown out You people in the Legislature would never stand for me going out and closing up half of the schools in the State of California, and so I am sure we have to exercise reason and judgment and that we have attempted to do But I am firmly of the opinion that on some of these bad buildings we are going to have to have a get-tough program if funds are not made available

There are many reasons why a revision of enforcement procedure for school fire safety regulations is essential First, the present regulations of the State Fire Marshal are of little effect if because of financial reasons the local districts are unable or unwilling to comply. This very reason demonstrates that not only is an enforcement tool necessary but also it must be accompanied by some source of funds so that local districts are not compelled on penalty of closing their schools to do something which is beyond the financial resources of the school district.

Second, as Mr Yockers pointed out in his testimony above, the present criminal procedure is an inappropriate method by which to proceed to correct fire trap schools The record clearly shows that this procedure has not been used, probably because of the reluctance of one public official to proceed in criminal action against another public official regarding a matter such as carpentry in a school building With this past record in mind it is unrealistic to think that the criminal procedure method will enjoy sufficient use in the future to insure that the schools meet adequate fire safety standards

Third, it is sometimes argued that fire safety in the schools is a matter of local concern and that enforcement should proceed from the local level There are several answers to this argument (a) The enforcement by the office of the State Fire Marshal must be initiated by the local fire officials, for his deputies in the local departments are his major arms for enforcement (b) Safety is, and has always been, a state concern, removed from the selfish financial interests which may permeate some local communities from time to time and work against the promotion of adequate health and safety measures It is for this reason that the present minimum fire safety standards and minimum standards for health and safety for residential occupancies are specified in our state statutes rather than being left to local determination (c) From the evidence presented by the Fire Marshal and by officials of local communities, lack of adequate fire safety measures in our schools is a statewide problem affecting a great number of our communities So prevalent a problem justifies a solution on a statewide level (d) Often local pressures and the unpopularity of a vigorous enforcement program will deter a local fire chief from taking steps to remedy hazardous conditions which he would have no hesitation to proceed against under a mandate of state authority

In spite of all these arguments in favor of giving to the State Fire Marshal injunctive powers to close hazardous schools these powers

must be surrounded by adequate safeguards so that schools will not be closed where the school board has already acted in good faith to begin to eliminate the hazard or where the required repairs are beyond the financial limitations of the school district.

The latter provision will be discussed in detail in the chapter immediately following, entitled "Financing School Fire Safety."

As to the safeguards against the abuse of power, several may be suggested. For example, the State Fire Marshal ought not to be able to use an injunctive power until after the following conditions have been satisfied:

1. He should issue an appropriate statement to the local board of education, which is maintaining the school in violation of the fire regulations, stating what must be done to bring the school in question up to adequate fire safety standards.
2. The school district ought to be given time to draw up and submit for approval plans for remedying the hazardous situation and to commence work.
3. The school district ought to be given time to arrange for the financing of expenditures required.

If the hazard is so great as to present an acute danger to life and limb before the above transaction can be completed, then the enforcement agency can resort to the present procedures for abatement of nuisances.

Division of Architecture

The Division of Architecture began to work in the area of school construction in 1933 after the passage of the famous Field Act dealing with earthquake hazards. This law resulted from the structural failure of school buildings in the Compton-Long Beach earthquake of March 1933. It established the authority of the Division of Architecture, Department of Public Works, to make rules and regulations about the safety of design and construction of public school buildings. This authority is fully defined in Education Code Sections 15451-15465 and Title 21 of the California Administrative Code.

The Division of Architecture works closely with both the State Fire Marshal and the Department of Education. As explained above, co-ordination with the efforts of the Fire Marshal is achieved by placing Fire Marshal's deputies in the offices of the Division of Architecture to work with the division in checking plans.

Co-ordination of the programs of the Division of Architecture and the Department of Education is achieved by mutual agreement between the division and the Bureau of School Planning clarifying how the two agencies would work together without duplication of effort.²² This agreement is based on the recognition that the jurisdiction of the Division of Architecture is much broader than that of the Department of Education. The division deals with all schools, regardless of size or organizational status, while unified districts over 1,500 average daily attendance and districts under the direction of a city board of education are beyond the jurisdiction of the Department of Education. The agreement also included the provision that the Department of Education would work with school district officials and their architectural

²² Details of this agreement are from the testimony of Mr. Doyt Early, *op cit*, p. 92.

and engineering representatives through the location, planning, and financing stages of school building design, and that the Division of Architecture would work with the same school district personnel in terms of the structural, fire, panic, and earthquake safety features of the school building plans. The two state agencies also agreed to cooperate with each other when alternate solutions to design and construction problems were presented. Where choices involved factors which impinge upon the instructional value of the building, the solution having the most educational values would be preferred.

The jurisdiction of the Division of Architecture extends to all plans for completely new construction of school buildings. These plans must be submitted to the Division for its approval regardless of the contemplated cost of the construction. In addition, when a school district wishes to add or to alter an existing building, it must submit its plans for approval if the cost of the additions or alterations exceeds \$10,000. Prior to the 1959 Legislative Session the jurisdiction of the Division extended to improvements of \$4,000 or more. The cost limit was raised by A B No 448 (1959) to permit school districts to make alterations and additions to existing schools constructed prior to the passage of the Field Act without the considerable expense of bringing these older schools up to present-day structural standards. The effect of this act was to enable the substantial alteration and enlargement of present school plants without having the plans and specifications checked for fire, panic, and structural safety.²³ The Department of Education feels that this lack of inspection of plans for alterations costing less than \$10,000 constitutes an inadequacy in the law. The Division of Architecture and the proponents of A B No 448 however argued that since the time of enacting the prior \$4,000 limitation, the cost of building has increased so much that a \$10,000 alteration is still not likely to be a major structural alteration. Exemption of alterations and additions costing less than \$10,000 merely enables school districts to make building improvements quickly without the time-consuming process of getting plans checked by the Division. It is further argued that if the law were to require that where minor building alterations or additions are made, the entire building must be brought up to the standards required by the Field Act, this would discourage improvement of old school buildings which are still being used.

Since the Legislature so recently spoke on this issue when it decided upon A B No 448, it is of little avail to raise the question again.

In addition to its function of checking plans for school construction or alteration, the Division of Architecture is also charged by statute to make such inspection of school buildings and construction work as is necessary for proper enforcement of statutory provisions applicable thereto or as is requested by the governing board of the school district or by 10 percent of the parents having children in the district schools.²⁴ Supervision of the construction work must be under the responsible charge of a certified architect or structural engineer, unless no architectural or structural changes are involved.²⁵

²³ *Ibid.*, p. 94

²⁴ California Education Code, Sec. 15463

²⁵ California Education Code, Sec. 15469

Department of Education

The Department of Education is responsible for making certain rules and regulations relating to school buildings and in certain cases for checking plans for these buildings.

The Bureau of School Planning is delegated the task of administering these regulations. The bureau differs from the Fire Marshal's office and the Division of Architecture in that its jurisdiction is much more restricted. In the first place the bureau deals only with public schools and not with private schools. Second, school districts governed by city boards of education are not under the jurisdiction of the Bureau of School Planning, nor are the governing boards of unified school districts with an average daily attendance of 1,500 or more, since these latter districts have all the rights and privileges of a city board of education.

Specifically, the responsibility of the Department of Education with regard to school buildings in accordance with the Education Code, and Title 5 of the California Administrative Code are as follows: ²⁶

- "1 To advise with the governing board of each school district on the acquisition of new school sites and, after a review of the available plots, give the governing board of the district in writing a list of the approved locations in order of their merit, considering especially the matters of educational merit, reduction of traffic hazards, and conformity to the organized regional plans as presented in the master plan of the planning commission having jurisdiction
- "2 Establish standards for school buildings
- "3 Review all plans and specifications for buildings in every district required to submit plans and specifications therefor to it for approval. The department may, upon the request of the governing board of any other district, review plans and specifications for buildings in such district. A schedule of charges for such services is formulated by the department
- "4 Approve plans and specifications submitted by governing boards of school districts, and return without approval and with recommendations for changes, any plans not conforming to established standards
- "5 Make all necessary provisions by which governing boards of school districts, or architects engaged by them, may procure by purchase or otherwise, copies of standard specifications, plans, and building codes prepared by the department
- "6 Make, upon the request of the governing board of any school district, except a city board of education, a survey of the building needs of the district, advise the governing board concerning the building needs, suggest plans for financing a building program to meet the needs, and collect the cost of the survey exclusive of the salaries of the state employees participating therein, from the district."

²⁶ Quoted from the summary of duties presented in testimony of Mr. Doxt Early, *Ibid.*, pp. 90-91.

With these duties in mind it can be easily seen that the Department of Education is primarily concerned not with the adequacy of fire safety facilities in the schools but rather with the educational aspects of school construction. The Bureau of School Planning deserves mention in this report, however, because the Bureau works in close cooperation with the Fire Marshal and the Division of Architecture in planning the total school building.

The Role of Local Government

Fire Departments

The local fire departments have the major role in achieving fire safety in the schools. Title 5 of the California Administrative Code makes it mandatory for each public school to have a fire drill at least once each month.

At the 1959 Regular Session of the Legislature a statute was enacted (A B No 2357) requiring the fire chief in each county to inspect every school building in his jurisdiction for the purpose of enforcing fire regulations at least once each year.

Health Officer

The local health officer may also be involved in fire safety under the Education Code requirement that if the supervisor of health of any school district notes any defect in plumbing, lighting, heating, or any other defect in the school building which tends to make the building unfit for the proper housing of the children, he must at once make a detailed report to the governing board of the school district. If within 15 days after he has filed this report he finds that the board has made no provision for the correction of the defect, he must at once report the defect to the county superintendent of schools who must proceed to have the defect corrected.²⁷

Building Officials

Supervision of school construction projects is done by local building officials, although the Division of Architecture may under its powers oversee the building work.

The Bureau of School Planning has suggested that the two large and significant areas of mechanical and electrical design features, which have a direct bearing on fire and panic safety, are not adequately checked on the installation level. The bureau makes this recommendation: "The mechanical and electrical phases of school building design should be inspected and approved during the installation phase of construction by the *designing engineer*. At the completion of construction an affidavit should be signed by the architect and his mechanical and electrical engineers to the effect that the mechanical and electrical areas of design have been inspected and approved during installation and that they have been installed as designed and meet all basic safety orders."²⁸

²⁷ California Education Code, Sec. 15501.

²⁸ Testimony of Mr. Doyt Early, *op cit*, p. 37.

Insurance Companies

In addition to the annual inspection conducted by the fire department most local schools are also inspected annually by their insurance carriers. Since this is an added source of information, it has been suggested that it should be mandatory for the school district to submit copies of these insurance carriers' reports to the office of the State Fire Marshal. These reports would supplement the information obtained from the local fire departments and give him a clearer composite picture of the fire safety hazards in local schools.

School Districts

Responsibility for maintaining adequate fire safety standards in the schools is usually distributed among teachers, maintenance personnel, and administrative personnel. Although there is no uniform allocation of authority in California school districts, the following outline suggests a model for division of responsibility:²⁹

A The School Board

- 1 Instruct superintendent to comply with fire safety laws, ordinances, and directives and request evidence of compliance with fire safety laws.
- 2 Yearly review by the board of the directives, plans, and procedures established for carrying out local and state fire prevention legislation. This should include an evaluation of the work of the safety education supervisor appointed by the superintendent to be responsible for the supervision and administration of fire safety education and accident prevention.
- 3 Appoint one faculty co-ordinator as responsible for all phases of school safety education and accident prevention including his duties as co-ordinator of fire safety education and prevention.
- 4 Provision for regular inspection of school premises by legal authorities and by insurance and fire prevention engineers in order to review and improve local and state legal requirements for fire safety education and accident prevention.

B Superintendent

- 1 Liaison with all state and local fire prevention authorities to be sure that all fire laws, ordinances, and regulations applying to the school are on file and properly distributed and interpreted to all appropriate personnel.
- 2 Inspection of each individual school building to determine if all fire laws and regulations are understood and complied with.
- 3 Investigation and evaluation of the effectiveness of fire prevention education included in the curriculum.
- 4 Active promotion of co-curricular organizations of fire safety monitors, assistants, etc., in order to expand fire safety education and youth leadership in exit drills, panic control, etc.
- 5 Liaison with insurance and other fire prevention advisory groups, civil defense authorities, building contractors, archi-

²⁹ From Charles A. French, "What Can You Do for Fire Safety?" *American School Board Journal*, 138 (March 1959), p. 35.

fects, and all other organizations and persons equipped to give assistance and training aids useful to fire prevention, disaster control, evacuation procedure, panic control, and first aid

- 6 Provision of an effective program of inservice education in fire prevention, exit drill and alarm regulations, panic control and first aid for all adult personnel of each school, including faculty members, custodians, lunchroom and clerical staff
- 7 Assistance in planning and periodic evaluation of evacuation charts, plans, and maps for each school building
- 8 Consultation to provide a fire safety check of architect's plans for new buildings and additions

C School Principal

- 1 Careful compliance with all directives mentioned above in order to be sure that these directives are met with appropriate action
- 2 Regular and periodic check of faculty members, other adult personnel, and students of his school to see if fire safety regulations are completely understood and practiced
- 3 A complete plan of alarm and evacuation drill procedures on file and posted to inform all concerned
- 4 Regular and surprise evacuation drills at least eight times per school year, utilizing various plans of egress, student-teacher leadership, etc
- 5 A posted and practiced plan for disrupting electric power or other utilities service during emergencies with tools and instructions available to all adult personnel, as well as the school engineer, principal, etc
- 6 Regular inspection of the school plant and program in shops, science laboratories, etc., to eliminate hazards of poor house-keeping, overloading of electric equipment, improper storage of flammables, and many other hazards that develop through changes in school programs, lack of emphasis on fire safety instruction, and other causes
- 7 Checkup on readiness of fire fighting equipment and practice in its use by all adult personnel
- 8 Completion of all required reports and inspection forms designated by law, ordinance or regulation, and communication of pertinent facts to appropriate personnel
- 9 Competent supervision of fire safety instruction in all pertinent curriculum areas
- 10 Adequate preparation of all appropriate personnel in special problems of disaster such as panic control, first-aid, co-operation with public officials, etc
- 11 Initiation of requests to officials for fire safety improvements such as the enclosure of stairwells, installation of fire stops and fire doors, elimination of obstructions, use of sprinklers and automatic detection systems, and construction changes found necessary through inspection and consultation with architects, builders, fire prevention engineers, etc

- 12 Information and requests for improvement to school officials on overcrowding of school building space, lack of sufficient exit and stair space, inadequate number of alarm signal stations, lack of fire resistive building materials, exits lacking panic bars, and other problems of fire prevention, evacuation, and damage control

D Classroom Teacher

- 1 Utilize all the dramatic and vivid instructional aids obtainable to accomplish learning objectives about fire and combustion, panic control, methods of emergency exit drills, leadership by teacher and pupils, etc
- 2 Using classroom events and subject matter areas as springboards to integrated knowledge, skill, and attitudes on fire safety
- 3 Acting safely to give the best possible example to pupils on safe storage of supplies and other housekeeping, safe use of electric equipment and tools, and an appropriate attitude toward evacuation drills and other safety measures. The teacher must be willing to help pupils grow in the development of these same attitudes and develop leadership potential as fire marshals, helpers, and rank and file co-operators
- 4 Passing on to the proper officials any insights obtained on fire construction needs, detection and alarm systems, corridor hazards, over-crowding, and all other fire safety aspects previously outlined as necessary to the proper instruction of principals, administrators and the school board as they develop policy
- 5 Encouraging school patrons to assist with fire safety education by helping children obtain certain information and reinforcing it through home emphasis.

In addition to the duties mentioned above a course of study in fire protection is offered in the elementary and high schools. This instruction is mandatory under the Education Code and should deal with the protection of lives and property against loss and damage as a result of preventable fire. The purpose of including this information in the school curriculum is (a) to create an understanding of the causes and origins of fires, (b) to emphasize the dangers of carelessness and neglect in homes and public buildings, and the necessity of care in the use of fires, and (c) to promote an interest in preventing fires and the protection of lives and property. The duty of carrying out this requirement falls upon the State Board of Education, which must adopt such rules and regulations as it deems necessary and proper to secure establishment of the courses, the superintendent of schools and local school boards who must enforce the course, and the school teachers whose obligation is to devote a reasonable time in each month during which school is in session to the instruction of pupils in the study of fire prevention.

FINANCING SCHOOL FIRE SAFETY

There are several alternate ways in which fire safety improvements other than maintenance tasks may be financed. First, funds for this purpose may be obtained from the general operating fund of the school district. This fund, however, is generally needed to supply educational services, and to require major building improvements from this source would substantially lower the instructional standards of the school district.

The second source of funds for fire safety come from bond issues. This source, however, requires the consent of two-thirds of the voters, and as was seen in the chapter on "School Fire Perils," in many districts the voters have been very reluctant to take this extra expense upon themselves. Part of the reason for this failure of bond issues, it must be admitted, is that the request for funds for school fire safety was coupled with requests for funds for other purposes. It is argued strongly by some that separation of the purposes for which the bonds are required would result in the passage of bonds for improvements so essential to life safety as fire protection facilities. This argument fails to explain the failure of bonds in many cases for several reasons. Many times the refusal of the voters to approve additional expenditures is a revolt of property owners against increased taxes in any form. An example of this phenomena was the municipal election in Berkeley in June 1960. Municipal bonds were voted upon according to purpose. Separate bonds were requested for purposes such as sewers, fire protections, and beautification of the civic center. All of the bonds failed, regardless of purpose. Furthermore, because the amount to be spent on fire improvements may be small compared with the total assessed valuation of the school district or with the annual school district budget, it would be inefficient to issue only perhaps \$20,000 worth of bonds at once. And finally, a good argument can be made for the proposition that the needs of school safety ought to be considered in conjunction with other vital necessities of the educational process and in conjunction with the overall financial planning of the school district. This would not be practicable if the purposes for which funds were needed and the amounts to be used were fragmented and submitted to the voters in pieces.

The third source of funds for fire safety may be derived from an override school district tax. The school district may override by majority vote the maximum school district tax specified in the Education Code. The latest records of the Department of Education show that of the 1,731 school districts in the State of California 877, or approximately 51 percent of the districts, are now taxing over the maximum school district tax rate. These 877 districts include 2,639,708 pupils, or 84 percent of California's public school population. On the other hand 38 percent of the districts, which care for 10 percent of the school children, are taxing at the maximum rate, while the remaining 11 percent of the school districts comprising 6 percent of the students tax below the maximum rate.²⁸

It is interesting to note that for many purposes deemed essential to the well-being of the students the school district can tax above the

²⁸ Department of Education, Bureau of Education Research, "Distribution of General Purpose Tax Rates by Administrative Organizations and A D A," 1958-59.

maximum school district tax rate *without* first having an election. These purposes include:

1. District contribution to retirement annuity fund³⁰
2. District contribution to state employee retirement³¹
3. Meals for needy pupils³²
4. Community services³³
5. Annual repayment on account of public school building fund apportionment³⁴
6. Annual repayment to school building fund³⁵
7. Payment of original district for acquisition of property³⁶
8. District contribution for OASI³⁷
9. Education for mentally retarded minors³⁸
10. Payment to county school service fund³⁹
11. Payment to districts for education provided in county institutions⁴⁰

In the 1960 First Extra Session of the Legislature AB 53 was passed. This measure authorized the school district to exceed the maximum school district tax rate to the extent necessary to obtain funds to bring the district's school buildings up to adequate fire safety standards. This provision is very limited in its applicability, however, and in order to qualify for the funds the district must meet the following requirements:

1. The tax increase cannot exceed 2 percent of the appraised replacement value of each building for which the fire prevention improvements are to be made.
2. The Fire Marshal must certify that fire prevention improvements are necessary to meet the minimum standards and regulations.
3. The State Department of Education must certify that the school district's financial resources are such that the increased tax is necessary to provide for the proposed fire prevention improvements.
4. The Department of Education must also certify that the school district has voted on a bond issue for capital outlay purposes twice within the last year, and that at each election the issue received a majority vote but failed to obtain the necessary two-thirds vote.

The latter provision was inserted in the bill under the philosophy that there should not be an extra tax placed upon the people of the district unless and until the voters in the district gave their consent. However, the long list of measures cited above which do not require voter approval provides ample precedent for the assertion that something as vital to the lives of the children as fire safety ought to

³⁰ California Education Code, Secs 14210 and 14211

³¹ California Government Code, Sec 20532

³² California Education Code, Sec 11706

³³ California Education Code, Sec 20801

³⁴ California Education Code, Sec 13443

³⁵ California Education Code, Sec 17019

³⁶ California Education Code, Sec 1615

³⁷ California Education Code, Sec 20801.5

³⁸ California Education Code, Sec 6913.1

³⁹ California Education Code, Sec 3877

⁴⁰ California Education Code, Sec 6354

be provided regardless of whether the pecuniary interest of the voters in the school district is stronger than their feelings of responsibility for the safety of the school children. It would, therefore, be advantageous to the welfare of the school children of this State if the last mentioned restriction (number 4 above) were amended so that all that would be required is that the school district did propose a bond issue within the past year, but that the bond issue was defeated. Also, if we are to have a continuing program of effective fire safety in California schools, the source of funds for this purpose should be continuing. Thus, it is also recommended that the time limitation "for the fiscal years 1960-61 and 1961-62," be removed.

A fourth source of funds for school fire safety improvements is the state aid for impoverished school districts. Although one-third of all the school districts in California are now drawing upon the State School Building Loan Fund, established to aid school districts to obtain needed school facilities after the school district has exhausted its own available resources, this fund does not seem to provide an adequate pool of resources for fire safety improvements for two reasons. First, the fund does not provide funds for alterations or remodeling of existing school facilities to obtain greater fire safety. If the unsafe features of the building are sufficiently severe to make it unfeasible to correct them, then the school district can qualify for state funds to replace the unsafe building. Thus, the fund is a last resort and would not provide resources for a continuing prevention program.⁴¹ Furthermore, the number of districts which can qualify for these funds is limited. The district must have exhausted its own resources. This means that it must have reached nearly the limit of its permissible bonded indebtedness. Where the school board cannot gain the acceptance of a bond issue however, as is the case in many of the urban school districts, the district cannot qualify for state aid.

SCHOOL FIRE HAZARDS

Aside from requiring alarm systems, the statutes in California do not specify the various equipment and building design for adequate fire safety. These specifications are left to the California Administrative Code.

In the 1959 Session of the Legislature A B 2005 was introduced by the late Assemblyman Seth Johnson. The bill required automatic fire alarm systems and automatic sprinkler systems for schools of more than one story. In addition the proposed alarm systems were to be heat activated. To finance this expenditure the maximum school district tax rate was to be increased to meet the cost of the alterations required for compliance with the proposal.

Although fire tests have proved the merit of sprinkler systems, there may be other methods of achieving the same degree of fire safety in some cases. For this reason it may be argued that it is not advisable to make mandatory by statute such a rigid and costly requirement as sprinkler systems. This function of judging what will meet the requirements of life safety is best left to an administrative agency which can

⁴¹ Letter from Mr. Charles Gibson, Chief of the Bureau of School Planning.

keep the regulations up to date and can comprehend the difficulties presented in each individual situation

As a matter of record the State Fire Marshal has done an excellent job in keeping the regulations up to date. The present revision of Title 19 is an example of continuing progress in this field. The following "School Fire Hazard Checklist" demonstrates the extent to which ideal solutions to fire hazards have been incorporated into the regulations of the Fire Marshal and made part of the state law.¹

SCHOOL FIRE HAZARD CHECKLIST

(Bold-faced suggested solutions have been enacted into law)

<i>Hazard</i>	<i>Suggested solution</i>
AVAILABILITY OF COMBUSTIBLES	
1 Trash stored in improper place	All basements, closets, attics, and other similar places not open to continuous observation shall be kept free of combustibles unless protected by an automatic sprinkler system.
2 Trash stored in improper container	All combustible material must be stored in approved noncombustible containers.
3 Use of liquefied petroleum gas as a fuel	Where liquefied petroleum gas is used, storage, handling and use must be in accord with Title 19 provisions.
4 Dry vegetation growing on school grounds and nearby premises	No dry vegetation is permitted on any premises adjacent to schools.
AVAILABILITY OF IGNITION ELEMENT	
1 Burning in improper incinerators near school grounds	Prohibit burning in improper containers near schools.
2 School has improper incineration equipment	Unless other approved means are provided for prompt disposal of rubbish, approved incinerators must be constructed, located, and maintained so that waste material can be safely burned at any hour of the day where local ordinances permit.
3 Faulty electrical wiring	Installation and maintenance of electrical wiring, fixtures, and appliances are subject to Division of Industrial Safety Regulations. Ventilation and refrigeration equipment also is subject to installation and maintenance standards.
4 Defective heating appliances	Type, placement, installation, maintenance and operation of all heating appliances in schools is specified in Title 19.
5 Smoking and careless use of matches by students on school grounds	Prohibit smoking on school grounds. Keep trash and combustibles in fire-resistant areas where students are not permitted.

¹ Information for the compilation of this chart is drawn from the following sources: Robert J. Quinn, "What Must Be Done for Fire Safety?", *American School Board Journal*, 138 (March 1959), p. 32; N. L. Englehardt, "Safeguarding Schools Against Fire Dangers," *American School Board Journal*, 138 (February 1954), pp. 65-67.

**DELAYED DETECTION
AND ALARM**

- 1 Fire not immediately detected because it started in unoccupied building
- 2 Fire starts in unoccupied part of building and is not detected by occupants until it has a good start
- 3 Inability of children to sound alarm

Automatic sprinkler systems, dry standpipes, and wet standpipes required in certain old schools.

Provide heat-activated or smoke-activated automatic alarm system

All schools with over 50 students must have a dependable manual alarm.

Mark all manual alarm switches conspicuously and place them not more than four feet from floor

**EMERGENCY EQUIPMENT
UNAVAILABLE**

- 1 No extinguisher available
- 2 Students cannot reach extinguisher
- 3 Inexperience in using extinguisher
- 4 Extinguishers not in operating condition
- 5 Inability to find extinguishers
- 6 Fire hose not in good operating condition
- 7 Insufficient substance in extinguisher to quench fire
- 8 Improper emergency equipment used

Approved type fire extinguishers shall be located throughout the entire structure in such a manner that a person will not have to travel more than 100 feet from any point to reach the nearest unit, but at least one unit shall be provided for each 5,000 square feet.

Install extinguisher at a level and in such a manner that it can be easily reached

Train teachers and students in types of extinguishers and their operation

Provide for annual recharge of all soda-acid extinguishers

Instruct all school students and personnel as to location of equipment. Mark equipment conspicuously. Make doors to fire hose boxes of glass

Any missing or rotten hose and nozzles should be replaced

Extra extinguishers must be placed in areas of extra hazard, such as kitchens and shops.

Type of extinguishers should be adapted to use of the area.

RAPID SPREAD OF FIRE

- 1 Collection of smoke and fumes impair exit.
- 2 Fire drawn up through vertical shafts
- 3 Fire doors made ineffective by being wedged open.
- 4 Collection of smoke in halls
- 5 Spread of smoke and fumes by exhaust fans
- 6 Combustible paints enable flames to spread quickly
- 7 Special fire-resistant construction needed in ultrahazardous areas

Enclose vertical shafts with fire-resistant material.

Prohibit wedging open any fire safety door. Instruct school personnel regarding danger of wedging

Install swinging smoke barrier doors in hallways over 300 feet long

Install automatic heat or smoke detection units near exhaust fans to sound alarms and shut off fan.

Burning point of interior wall and ceiling finishes are specified in regulations.

Title 19 specifies enclosure for boiler rooms, furnace rooms, and central heating plant.

- | | |
|---|--|
| 8 Fire spreads quickly through unoccupied attic areas | When roof or ceiling framing is of combustible construction, attic separations must be provided. |
| 9 Auditoriums, stages, etc., present special hazards | Stages, platforms, projection booths, drapes, and decorations must comply with specified standards of fire safety. |

INADEQUATE PASSAGEWAYS AND EXITS

- | | |
|---|---|
| 1 Inexperience in using fire exits | Fire drills must be conducted monthly. |
| 2 Blaze not confined to room of origin | Install fire barrier doors on all corridor and room partition openings |
| 3 Exits cannot be located | Install clear electric aisle and exit lights and keep in good repair |
| 4 Can't exit through windows because of nailed screens. | Prohibit nailing of screening over windows through which people might escape in emergency |
| 5 Too many people in school for fast exit | Limit school room occupancy to one pupil per 20 square feet of floor space to prevent crowding |
| 6 Panic impairs ability to open door | Provide all exits with panic bars and require that they open outward. |
| 7 Can't open doors and windows because of inoperative locks | Keep all doors, windows, and locks in operating condition |
| 8 Inadequate number of exits | All schools must be provided with "adequate and ample means for evacuating students from the building in event of fire or other emergency." |

RESEARCH AND NEW DEVELOPMENTS

As a result of the tragic Chicago school fire in 1958 it was found that much information was needed about the performance of materials and safety devices under actual fire conditions. Because Robert Louis Stevenson Junior High School in Los Angeles was to be demolished, the school building was donated for the purposes of these tests. The building was stacked with fuel and safety devices were built in. Sensitive testing equipment recorded temperature and smoke conditions and other data when the building was set afire.

The tests were directed by Raymond M. Hill, Fire Marshal, City of Los Angeles. Mr. Norman J. Thompson, former director of Factory Mutual Laboratories, served as technical consultant. Chief John G. Degenkolb of the Los Angeles Fire Department was assistant director in charge of procurement and Chief Leo K. Najarian, also of the Los Angeles Fire Department, supervised the instrumentation and recording of data. Sponsoring agencies included the Los Angeles Fire Department, the Los Angeles Board of Education, the Educational Facilities Laboratories, Inc., and the State Fire Marshal.

Further details as to the conducting of these tests can be found in the book, *Operation School Burning*, published by the National Fire Protection Association. It is sufficient for our purposes here to quote the summary of results published in that book. Therefore, these results follow:

Summary of Results

1. With the test fires used in these tests and no fuel added to the fire due to the construction of the building, smoke (specifically as it pertains to visibility and irritant effects) was the principal life safety hazard. Untenable smoke conditions preceded untenable temperature conditions in nearly every test.
2. Natural draft vents of the sizes tested in this investigation and installed and opened as described in each test did not keep corridors and stairways tenable for exit use.
3. The addition of curtain boards with vents did not significantly aid in decreasing smoke spread through the building and, in fact, had an adverse effect on the action of the vents in some tests.
4. Forced draft up to the capacity tested failed to produce any more satisfactory venting action.
5. A complete system of automatic sprinklers will maintain low temperatures throughout the building and will prevent extensive buildup of smoke and irritating gases.
6. Partial automatic sprinklers (sprinklers installed in exitways but not in the fire area) did not prevent smoke spread throughout the building even when installed to provide a water curtain between the test fire and the corridors.
7. Vents and partial automatic sprinklers (sprinklers installed in exitways but not in the fire area) was not an effective combination.
8. Combinations of vents, curtain boards, and partial automatic sprinklers (sprinklers installed in exitways but not in the fire area) did not prove to be satisfactory.
9. Untenable smoke conditions existed in the building before the operation of fusible link actuated devices.
10. Enclosed stairways will not provide protection against heat and smoke unless the doors are closed or are closed immediately after an outbreak of fire.
11. Automatic *heat* detection devices detected the presence of fire at about the same time that untenable smoke conditions were reached within the building.
12. Automatic *smoke* detection devices detected the presence of fire before untenable smoke conditions were reached, but not in sufficient time to allow complete evacuation of the test building.
13. Opening a hole to provide a vertical flue in the stairways did not significantly change any of the results.
14. Cellulose fiber acoustical tile (classified Class C and commonly known as "slow-burning" under U.S. Federal Specification SS-A-118b) resulted in very rapid fire spread when ignited. This constituted a distinct hazard in that it was the means by which fire could be readily transmitted throughout the building endangering all portions and persons therein. The rapid flame spread characteristic of the tile can be reduced with the application of a fire retardant paint (Underwriters' Laboratories, Inc., listed).

These tests demonstrated the usefulness of experimentation because many of the conditions formerly thought to provide ample protection

against fire long enough to enable escape from a building were found to create untenable conditions within an exceedingly short time. More information is needed, and the Los Angeles Fire Department is presently preparing for a second series of tests to extend the information gained in the first series. The implications of these tests for the law of California is great because of their influence on the future regulations promulgated by the Fire Marshal. Already the State Fire Marshal has begun to rewrite Title 19 in accordance with the new information gained. This revision will bring California's fire laws up to modern standards and incorporate the latest knowledge for the protection of California school children.

PART II

RESIDENTIAL SAFETY

FINDINGS

1. The State Housing Act is generally considered obsolete and archaic. It does not provide effective minimum standards of health and safety for residential construction. It is for the most part a "specification" code rather than a "performance" code, listing in detail acceptable materials and construction techniques instead of specifying minimum standards of performance to be fulfilled by any construction materials and techniques employed.

2. The State Housing Act is not easily revised. The detailed statutory provisions require constant amendment to keep them up to date.

3. The act does not apply uniformly throughout the State. All housing construction within incorporated areas, but only apartment and hotel type construction in unincorporated areas is covered. Residential construction in unincorporated areas, therefore, proceeds with no minimum requirements under the state code.

4. Enforcement of the act rests largely with local jurisdictions. No state agency has the explicit duty to insure compliance with the minimum standards of the Housing Act. The State Division of Housing has some general responsibilities but the act outlines these only in permissive terms. Thus, it "may" enforce the provisions of the Housing Act where there are no local codes or enforcement agencies, and it "may" review the adequacy of local programs and local enforcement. In practice the division has no organized program in either area.

CONCLUSIONS

1. Legislation is needed which will effect a major revision in the State Housing Act to enable the Division of Housing to promulgate rules and regulations which will maintain adequate fire and safety provisions commensurate with the everchanging trends in the design and construction of housing in California.
2. All types of occupancies for human habitation are housing and thus should be subject to the minimum standards of a State Housing Law. Such a general policy statement, however, would comprehend many nonstructural units (trailers, tents, houseboats) which have peculiar problems of their own. Since these types of dwellings are still relatively few in comparison with hotels, apartment houses and individual dwelling units, immediate action should concern itself with establishing effective regulations for the major structural occupancies.
3. Because administrative regulations are a more flexible, efficient and desirable means of establishing housing regulations than detailed statutory enactment, the question of retroactivity need not arise in any contemplated revision of the Housing Law.

- 4 The enactment of an enabling-type Housing Law is only an initial step toward the more difficult task of compiling an effective and justifiable administrative code
- 5 The environmental health and safety of all citizens depend to a large degree upon the effectiveness of adequate housing standards

RESIDENTIAL SAFETY AND THE STATE HOUSING ACT

Need for Study

Residential fires yearly take a substantial toll of lives in California. Although the annual number of deaths by fire has declined steadily since 1953, 361 persons were killed in fires during 1958. Of these deaths 241 (74 percent) occurred in one- or two-family dwellings; 68 occurred in apartment houses or hotels and motels, and the remaining 52 met death in trailers or other unreported types of housing.¹

The major contributing factors of fire death include trapping by fire, smoking, especially smoking in bed, accidental ignition of clothing, panic, and inadequate exits.² The factors which involve individual carelessness or panic are admittedly difficult subjects for legislative intervention. Other causes, however, such as inadequate exits and trapping by fire justify an examination of state laws governing housing.

Other areas of residential safety besides that of fire protection reinforce the demand for such an examination. Each year, for example, the State Division of Housing reports a number of deaths caused by "unvented or defective gas appliances." At present there is considerable controversy over the safety of properly installed unvented gas heaters.³ Whether such deaths have been caused by faulty or unapproved heaters or whether unvented heaters are dangerous in themselves is a moot question for present purposes. The fact that these deaths did occur is additional reason for a study of existing housing laws.

In addition to these specific reasons for such a study there are other equally legitimate, but more general, considerations. Disease is always prevalent in areas of low standard housing, primarily because of inadequate sanitation facilities. Old housing in the process of degenerating into areas of blight and new housing, especially that of a "temporary" nature which is likely to deteriorate into such areas, are genuine objects of legislative concern. An effective remedy for prevention of such deterioration in housing is statewide enforcement of adequate housing standards.

California has a vital need for adequate up-to-date housing standards. In new construction this State ranks first in the nation with an annual expenditure of over four billion dollars. Constant population increases continually outstrip new construction, however, and many housing needs are being met by more extensive use of old dwellings built in days when building regulations were relatively few and knowledge of safety measures rudimentary. It is incumbent upon the agencies concerned that all housing in this State meet reasonable standards of modern safety.

¹ State Fire Marshal 1958 Fire Casualty Report, p. 2. For a breakdown on fire deaths during 1958 see Table I.

² *Ibid.* p. 5. For a complete list of factors contributing to fire deaths see Table II.

³ Testimony of Eule R. Vaughan, President, National Apartment Owners Association, before Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, December 18, 1959, Transcript, pp. 159-60.

TABLE I
REPORT OF STATE FIRE MARSHAL
1958

Deaths by Fire in California Housing

	1958 No	Percent
Rural areas	118	32.7
City areas	243	67.3
Total	361	100%
Ambulatory	332	
Nonambulatory	29	
Total	361	
Cause of Death		
Burns	228	
Asphyxiation	76	
Monoxide	53	
Other	4	
Total	361	
Type of Occupancy		
One or two family dwelling	241	
Apartment or multiple dwelling	41	
Hotel	24	
Motel or auto court	3	
Trailer	16	
Other type	2	
Unknown	34	
Total	361	

TABLE II
1958 REPORT OF DEATHS BY FIRE IN CALIFORNIA

Contributing Factors	1958	1957	1956	1955	Average 1951-53
Panic	22	13	9	8	3.3
Inadequate exits	14	6	18	15	10.3
Trapped by fire	92	98	73	92	60.7
Jumped from burning building	2	1	--	--	2.0
Sickness resulting from fire	3	4	2	6	1.7
Fell in effort to escape	8	15	9	11	3.0
Smoking	54	77	82	70	53.0
Smoking in bed	54	50	79	57	68.0
Accidental ignition of clothing	35	83	108	105	70.7
Flammable liquids	11	8	45	40	35.0
Explosion of natural gas	11	12	14	14	14.7
Explosion of L.P.G.	3	11	10	6	17.0
Home dry cleaning	1	--	7	4	5.0
Defective electrical appliances	9	11	14	11	9.3
Defective heating appliances	9	17	18	41	21.0
Children with matches	3	16	17	11	17.7
Burning rubbish	--	4	7	3	3.7
Incendiary fire	2	3	7	4	8.0
Poor housekeeping	2	5	3	9	5.3
Intoxication	6	40	52	69	40.3
Attempted rescue	1	--	3	3	1.3
Flammable decorations, etc	1	4	6	9	4.0
Locked exit door	--	6	3	1	4.3
Children left unattended	3	32	24	30	18.7
Other factors	19	39	52	95	110.3
Flammable interior finish	1	--	--	--	--

Residential Building and Construction Laws—Their Inadequacies

The major regulations governing housing construction appear in the State Housing Act⁴. This is a detailed statute covering technical requirements for construction, safety, fire and occupancy of dwellings, apartment houses and hotels. The provisions of the act include

- a Space requirements such as
 - 1 Distances required between buildings on the same lot
 - 2 Specifications for passageways to rear buildings
 - 3 Provisions for unoccupied areas, yards and courts
 - 4 Standards for the height of buildings
 - 5 Requirements for basements
 - 6 Specifications for lower floor air space
 - 7 Standards for rooms and hallways
- b Specifications in detail covering
 - 1 Hallways
 - 2 Doorways
 - 3 Windows and skylights
 - 4 Stairways and enclosures
 - 5 Fire escapes and fire protection equipment
- c Standards for structural ducts such as
 - 1 Standpipes
 - 2 Shafts
 - 3 Air ducts
 - 4 Vent shafts
 - 5 Gas vents
 - 6 Plumbing
- d Provisions for special types of rooms and uses, e.g., boiler rooms, garages, dormitories, etc

The outstanding problem with such a detailed statute is that it fails to acknowledge technical advances in the building field. New techniques in the use of concrete or steel, for example, may more than satisfy the performance requirements of the statute, yet may have to be rejected because they do not conform to literal specifications set forth in that statute. Specific provisions of this type quickly become antiquated and inadequate and thus require almost constant revision. The statutory form of the Housing Act makes it difficult and time consuming to modify. Although still conceded to be obsolete and inadequate, it has been amended over 300 times in an effort to meet the current needs. Each session of the Legislature produces several additional amendments.

Conversely, inadequate construction can, and often does, exist within the letter of the present statute. The Housing Act, for example, specifies *only* the square footage of window space required for bedrooms.⁵

⁴ Health and Safety Code, Secs. 15000 et seq.

⁵ Health and Safety Code, Sec. 16224.

At one time this provision was deemed adequate to supply ample space for emergency escape purposes. Recent architectural trends, however, have frustrated this intent. There may be several windows in a bedroom each too small for escape and/or they may be positioned so high in the wall that egress through them is a practical impossibility.⁶

These situations are characteristic rather than solitary examples of the rigidity and obsolescence of the Housing Act. There are, furthermore, additional limitations to the Housing Act, the most important of which are in the area of its applicability. The first major limitation is that it is not retroactive. Thus, it does not apply to old buildings which may have been constructed when standards for fire safety were inadequate or nonexistent. Many older hotels and apartments, for example, have open stairways with no fire doors separating floors. This type of construction creates a chimney-like draft that would spread a fire upward. Most large homes which have been converted into apartment buildings have the additional hazards of general overcrowding and inadequate exits.

Fire safety personnel make a particularly poignant plea for retroactivity by arguing that many of the people who live in substandard occupancies are *forced* for economic reasons to live in such places.⁷ Apartment house owners, however, counter with the argument that retroactivity should be seldom invoked. A building certified safe at the time of its construction and adequately maintained remains reasonably safe. Because of the costs involved they feel that retroactive measures should be taken only when conditions constitute a clear and present danger to life and limb.

The second limitation on the applicability of the Housing Act is that while it applies to *all* apartment houses and hotels within the state, its application to other dwellings, e.g., houses, duplexes, etc., is restricted to those in incorporated areas.⁸ For practical purposes, therefore, the application of the Housing Act to individual homes is restricted to those homes within city boundaries. This limitation is important for two reasons. First, during 1958, 118 fire deaths occurred in rural, i.e., unincorporated, areas.⁹ Because a relatively small portion of the State's population lives in rural areas, the seemingly disproportionate number of fire deaths warrants the hypothesis that inadequate construction in these areas may present a high fire hazard. The second reason for the importance of the limited applicability of the Housing Act is the problem of tract homes. Often large tracts of single-family dwellings are constructed in unincorporated areas adjacent to cities. Although many of these areas are subsequently incorporated into the cities, their initial construction is done without benefit of uniform building requirements. In all analyses of fire data, furthermore, such dwellings must be classed as "rural" buildings when in fact they are not.

⁶ Testimony of John E. Degenkolb, Los Angeles Fire Department, before Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, December 18, 1959, Transcript, pp. 54-55.

⁷ Testimony of William L. Miller, Chief Engineer, Los Angeles Fire Department, before Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, December 18, 1959, Transcript, p. 46.

⁸ Health and Safety Code, Sec. 17151.

⁹ State Fire Marshal, *op cit*, p. 6.

OTHER STATE LAWS

In the light of the jumble of agencies which have jurisdiction over building regulations any uniformity seems almost coincidental. Under the Administrative Code, 18 different state agencies have adopted and enforce building regulations.¹⁰ In addition, many of these agencies have divisions, boards or commissions which are also authorized to adopt and enforce building regulations. Thus, there is a total of 30 administrative agencies adopting building regulations. This source alone accounts for 4,050 building regulations.¹¹ Additional building regulations in other state codes and in the general laws and statutes push the total to 4,668.¹² A source of further confusion is that many groups not normally associated with the construction industry determine building standards. Barbers, doctors, cosmetologists, chiropractors, as well as state agencies such as Department of Motor Vehicles, Department of Finance, the Division of Fish and Game and of Forestry are but a few of the groups who write their own regulations.¹³ The predictable result of such a situation is one of confusion. There are some instances of conflicting regulations, many instances of overlapping ones and even a few instances of important areas which have been almost entirely neglected.

The seriousness and extent of this situation was emphasized by investigations into the problem of overlapping building regulations conducted in 1952 by the Assembly Committee on Governmental Efficiency and Economy. Pursuing a committee recommendation, the Legislature created in 1953 the State Building Standards Commission. The Commission was charged with eliminating overlap in building regulations by compiling a single building code for the entire state. At the present time the Commission has just completed an exhaustive indexing of present state regulations, and is in the process of publishing a uniform index and reference guide to all present building standards now enforced in the State by state agencies. In addition to these duties the Commission serves as a general clearing house for state agencies writing building regulations. Every proposed regulation must be submitted to the commission for review. Although the Commission cannot make any substantive change in a proposed regulation, it can veto a proposal if it conflicts with or overlaps an existing regulation.

¹⁰ For a complete list see Table III.

¹¹ See Table IV.

¹² See Table IV.

¹³ Testimony of Harry A. Cobden, Senior Building Code Analyst, State Building Standards Commission, before Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, December 18, 1953, Transcript, pp. 41-43.

TABLE III
THE FOLLOWING STATE AGENCIES HAVE ADOPTED AND ENFORCE
ADMINISTRATIVE BUILDING REGULATIONS

1	Department of Agriculture	(Title 3)
2	Local Allocation Division, Department of Finance	(Title 2)
3	State Lands Commission, Department of Finance	(Title 2)
4	Department of Education	(Title 5)
5	Department of Industrial Relations	(Title 8)
	(a) Division of Industrial Safety	(Title 8)
	(b) Division of Housing	(Title 8)
	(c) Division of Industrial Welfare	(Title 8)
6	Department of Mental Hygiene	(Title 9)
7	Investment	(Title 10)
	(a) Community Land Chests	(Title 10)
	(b) Multiple Housing or Office Plans	(Title 10)
8	Military and Veterans Affairs	(Title 12)
9	Motor Vehicles	(Title 13)
10	Natural Resources	(Title 14)
	(a) Beaches and Parks	(Title 14)
11	Professional and Vocational Regulations	(Title 16)
	(a) Barber Examiners	(Title 16)
	(b) Chiropractic Examiners	(Title 16)
	(c) Board of Cosmetology	(Title 16)
	(d) Funeral Directors and Embalmers	(Title 16)
	(e) Board of Medical Examiners	(Title 16)
	(f) Board of Osteopathic Examiners	(Title 16)
	(g) Board of Pharmacy	(Title 16)
	(h) Board of Guide Dogs for the Blind	(Title 16)
12	Public Health	(Title 17)
13	Public Safety	(Title 19)
	(a) State Fire Marshal	(Title 19)
14	Public Utilities	(Title 20)
15	Public Works	(Title 21)
16	Social Welfare	(Title 22)
17	Waters	(Title 23)
18	Building Standards Commission	(Title 24)

NOTE There are 18 principal agencies, however, several agencies have divisions, boards and commissions authorized to adopt building regulations so there is a total of 30

NOTE All titles referred to are found in the California Administrative Code

TABLE IV
BUILDING REGULATIONS FOUND IN THE CALIFORNIA ADMINISTRATIVE CODES

	No
Title 2 Department of Finance	
Building and Grounds Division	}
Local Allocation Division	
State Land Commission	
Title 3 Agriculture	80
Title 4 Business Regulations	
Alcoholic Beverage Control	}
California Horse Racing Board	
State Aeronautics Commission	
Title 5 Education	18
Title 8 Department of Industrial Relations	2,520
Title 9 Department of Mental Hygiene	40
Title 10 Investments	2
Title 12 Military and Veterans Affairs	1
Title 13 Motor Vehicles	3
Title 14 Natural Resources	2
Title 16 Professional and Vocational Regulations	
State Board of Barber Examiners	}
State Board of Chiropractic Examiners	
State Board of Cosmetology	
State Board of Funeral Directors	
State Board of Medical Examiners	
State Board of Osteopathic Examiners	
State Board of Pharmacy	
State Board of Guide Dogs for the Blind	
Title 17 Public Health	85
Title 19 Public Safety	
State Fire Marshal	759
Title 20 Public Utilities	3
Title 21 Public Works	
Division of Architecture	574
Title 22 Department of Social Welfare	76
Title 23 Waters	39
Title 24 State Building Standards Commission	20
Total	4,050

**BUILDING REGULATIONS AUTHORIZED IN OTHER CODES, IN THE
STATUTES, AND GENERAL LAWS**

No	
606	Agriculture Code
	Business and Professional Code
	Education Code
	Government Code
	Harbors and Navigation Code
	Health and Safety Code
	Labor Code
	Penal Code
	Public Resources Code
	Public Utilities Code
12	Welfare and Institutions Code
	General Laws
	Act 619, Act 1334, Act 1471,
	Act 2529, Act 3481, Act 3482,
	Act 3483, Act 3484, Act 5147,
	Act 5171, Act 5183, Act 6211.

Total 618

GRAND TOTAL 4,668

LOCAL GOVERNMENT REGULATIONS

The provisions of the State Housing Act make it a minimum standard where it applies, viz., within all incorporated areas and with reference to all apartment houses and hotels regardless of location. It is a permissive minimum, however. Most local jurisdictions have adopted their own codes to meet specific local conditions.¹⁴ Such codes are invariably more strict than the State Housing Act but under the provisions of the Housing Act must be at least equally strict. Wherever local codes exist, there invariably are local inspection and enforcement agencies. The caliber of service provided by these agencies seems adequate and at any rate is not a matter of concern to the State except to the extent that standards at least equal to those in the Housing Act are maintained. Many cities without local codes are handicapped to some extent by having to operate under different, and sometimes conflicting, regulations from different state agencies. A serious situation exists in areas when there are neither local codes nor inspection agencies. With no provisions for standards these areas become a "no man's land" where any standards prevail.¹⁵ Housing tracts constructed in such unincorporated areas would be subject to no building standards and, of course, would not be inspected.

ADMINISTRATION AND ENFORCEMENT OF STATE HOUSING ACT

The Housing Act delegates primary responsibility for enforcement of its provisions to local units of government. Cities are charged with enforcement of provisions relating to apartment houses, hotels and dwellings situated in incorporated areas, the counties with the provisions relating to apartment houses and hotels (exclusive of individual dwellings) in unincorporated areas. Enforcement and effectiveness of local programs vary widely throughout the State and are obviously dependent on the degree to which local personnel have been trained and upon the strength of local housing and health departments.

At present the Division of Housing has some supervisory powers over local programs. This agency is charged generally with securing compliance with state building laws.¹⁶ In performance of this task it may examine the records of city departments charged with enforcing building regulations,¹⁷ may study the operation of existing housing laws;¹⁸ may require any state, county, or municipal official to supply information and references to records,¹⁹ or may gather evidence needed to institute prosecutions against anyone suspected of violating housing regulations.²⁰

The Division of Housing has a long history as a state agency. It was created in 1913 and originally was called The Commission of Immigration and Housing. Its principal function at that time was to assist with the assimilation of California's rapidly expanding alien population. In

¹⁴ Many California cities have adopted the Uniform Building Code as a standard but it is frequently amended before local adoption.

¹⁵ Testimony of Ernest G. Kramm, National Electrical Contractors Association, before Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, December 18, 1959, Transcript pp. 144-45.

¹⁶ Labor Code, Division 2, Part 5, Sec. 1475.

¹⁷ *Ibid.*, Sec. 1476.

¹⁸ *Ibid.*, Sec. 1477.

¹⁹ *Ibid.*, Sec. 1482.

²⁰ *Ibid.*, Sec. 1483.

1927 the name was changed to the Division of Housing, and it was placed in its present position within the Department of Industrial Relations. Although the Division is within this Department and thus theoretically responsible to the Director of the Department in both matters of policy and those of its program, in actual practice it retains a great measure of independence. The Division Chief is appointed directly by the Governor and in addition there is a lay advisory group, the Housing Commission, also appointed by the Governor, which exerts considerable influence in matters of policy and program.

In addition to its responsibilities with regard to the Housing Act the Division has certain administrative and enforcement responsibilities under the Auto Court, Resort and Motel Act,²¹ the Trailer Park Act,²² the Labor Camp Act,²³ and the Earthquake Protection Act.²⁴ All of the latter responsibilities are readily classifiable under the general heading of "housing" as all are concerned in some way with conditions of safety, sanitation, etc., in particular types of dwellings. Most of the responsibilities of the Division thus are not in the general area of industrial relations and are not closely related to the work of other divisions in the department.

The prevailing practice is for the Division of Housing to allow great latitude for local enforcement of housing regulations. Of the various division programs, only two—the trailer coach and labor camp inspection programs—receive systematic statewide enforcement, although the division has broad powers to oversee the enforcement of all housing laws.²⁵ In the opinion of the Legislative Analyst, "the division's present field efforts are directed to the trailer coach and labor camp programs with other responsibilities served only as time permits."²⁶ The Housing Act itself encourages such an interpretation. In listing the Division's duties, it states that the Division "may" enforce the provisions of the Act relating to apartment houses and hotels in unincorporated areas, and it "may" enforce the provisions pertaining to maintenance, sanitation, ventilation, use and occupancy of buildings in cities where it has given the local enforcement agency written notice of violation and where such violation has not been corrected within 30 days.²⁷ Specific authority for enforcing all provisions relating to erection, conversion, alteration or arrangement of dwellings is given primarily to the appropriate city or county official.²⁸ In practice the attitude of the Division of Housing is that local building standards are matters of local public health and safety and therefore more properly a responsibility of local governments.

The result of such statutory vagueness and permissiveness is a complete lack of enforcement of uniform building standards throughout the state. Approximately one half the counties, for example, have codes and enforcement facilities,²⁹ the rest simply allow the responsibility to rest with the Division of Housing, which has no unified approach

²¹ *Ibid.*, Sec. 18550.

²² *Ibid.*, Sec. 18100.

²³ Labor Code, Sec. 2422.

²⁴ Health and Safety Code, Sec. 19124.

²⁵ Labor Code, Secs. 1460-1466.

²⁶ California Legislature, 1959 Regular Session, "Report of the Legislative Analyst to the Joint Legislative Budget Committee," item 154, p. 447.

²⁷ Health and Safety Code, Sec. 15255.

²⁸ *Ibid.*, Secs. 15250-15254.

²⁹ California Legislature, *op cit* p. 447.

to the problem. In some places where neither state nor local units of government perform the necessary enforcement functions, there are, in effect, no building laws. Furthermore, although the Housing Act requires permits for construction in incorporated areas, this stipulation does not apply to unincorporated areas. Consequently, even if the division had a comprehensive enforcement program it would have no prior controls over new construction. It could not require submission of plans or inspection of work in progress. Thus it could employ its enforcement powers only subsequent to construction and then only upon the registration of a complaint or accidental discovery of a violation.²⁰

RELATIONSHIP TO FEDERAL REDEVELOPMENT AND URBAN RENEWAL PROGRAMS

The Federal Housing Act of 1949 inaugurated the Federal Urban Renewal Program. Under the terms of this act federal funds were made available to counties and municipalities for slum clearance and redevelopment. Although there would be local funds involved in any such program, the federal government retained the right to stipulate the minimum building standards which would be used in new construction.

Many California communities began urban renewal programs only to find themselves suddenly cut off from federal funds. The federal government decided that the minimum building standards stipulated by the State Housing Act were inadequate and hence unacceptable for purposes of federal aid. The gravity of the situation was increased by an interpretation of Chapter 9, Division 13 of the Health and Safety Code as prohibiting cities and counties from enacting and enforcing any housing ordinance more restrictive in its provisions than the provisions of the State Housing Act. In effect the cities and counties of California were operating under inadequate building regulations yet had no power to change them.

The situation became so serious that in 1957 emergency legislation was rushed through the California Legislature. Senate Bill 1081 amended Section 19825 of the Health and Safety Code to allow cities and counties to adopt housing standards more stringent than those provided in the State Housing Act. It was signed by the Governor on July 4, 1957, and went into effect immediately.

In recognizing the obsolescence of the State Housing Act, the urgency clause, Section 2 of the bill stated:

"SEC. 2. This act is an urgency measure necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

"Cities and counties in California in cooperation with the Urban Renewal Program of the Federal Government have under way urban renewal programs as contained in the Federal Housing Act of 1949 as amended. To qualify for proffered federal aid in

²⁰ Testimony of Lowell Nelson, Chief, Division of Housing, Department of Industrial Relations, before Assembly Interim Committee on Public Health, Subcommittee on Fire Protection, December 18, 1959, Transcript p. 7.

such programs communities are required to enact and enforce housing codes commensurate with modern, sound housing and neighborhood standards. Many provisions of the State Housing Act have been deemed inadequate in meeting such standards and Chapter 9 of Division 13 of the Health and Safety Code has been interpreted as prohibiting cities and counties from enacting and enforcing a housing ordinance that is more restrictive in its provisions than are the provisions of the State Housing Act."

PART III

ADVISORY COMMITTEE RECOMMENDATIONS AND PROPOSED LEGISLATION

Pursuant to its assigned duties, the advisory committee¹ held an organizational meeting on May 9, 1960. Four subcommittees were organized for greater efficiency in compiling its study. At this time also the advisory committee established a threefold objective: (1) to define the policy issues at stake in any alteration of the State Housing Act; (2) to establish the administrative requirements of and the areas of applicability of a "good" housing law, (3) to define problems for future legislative study.

After extensive study by the advisory subcommittees the following major recommendations were made in August 1960:²

- 1 That the Housing Act be revised to operate uniformly throughout the state in unincorporated as well as in incorporated areas.
- 2 That the revised act would be an enabling act assigning to an appropriate administrative agency the duty of formulating and enforcing housing requirements. This represents a complete departure from the form of the existing act which spells out building requirements.
- 3 That the principal function of a revised housing act would be to provide statewide minimum standards of health and safety in all dwelling units. Local jurisdictions would retain the option of adopting their own housing codes provided that such codes were at least as restrictive as state regulations.
- 4 That appeals from rulings of the administering agency would be to an appointed housing commission composed of qualified representatives of the building and housing industry.

At this time also the advisory committee appointed a drafting subcommittee³ to embody these recommendations in the form of proposed legislation. The following proposed legislation was submitted to the legislative subcommittee on November 14, 1960.

¹ *Supra* p. 2.

² For a complete text of the Advisory Committee Report see Appendix II.

³ Membership of this subcommittee consisted of Byron Nishkian, Lowell Nelson, Harry Cobden, Earle R. Vaughan, Edw. M. O'Connor and John G. Degenkolb.

PROPOSED LEGISLATION

An act to repeal Sections 75, 76, 76 5, 76 7, 77 and Part 5 (commencing with Section 1460) of Division 2 of the Labor Code, and to repeal Part 1 (commencing with Section 15000) of Division 13 of, and to add Part 1 5 (commencing with Section 17910) to, the Health and Safety Code, relating to housing

The people of the State of California do enact as follows:

SECTION 1 Section 75 of the Labor Code is repealed

75- There is in the Division of Housing the Commission of Housing which consists of five members. The members of the commission shall be appointed by and hold office at the pleasure of the Governor.

SEC 2 Section 76 of said code is repealed

76- The Commission of Housing may determine policies for the guidance of the division in all matters concerning the administration of the laws which the division is to enforce. With the approval of the Director of Industrial Relations and the advice of the Commission of Housing the Chief of the Division of Housing shall in accordance with the provisions of Chapter 4 of Part 1 of Division 3 of Title 2 of the Government Code adopt, repeal, and amend rules and regulations consistent with law for the protection of the health, safety and the general welfare of the people of the State of California in order to interpret and make more specific the laws which the Division of Housing is to enforce.

The chief of the division shall not adopt, publish, or enforce any rules, regulations, orders, standards of general application, policies or interpretations which implement, interpret or make specific the law enforced or administered by the Division of Housing unless such rules are adopted in accordance with the provisions of Chapter 4 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC 3 Section 76 5 of said code is repealed

76 5- All meetings of the commission shall be open and public.

SEC 4 Section 76 7 of said code is repealed

76 7- All records of the commission shall be open to inspection by the public during regular office hours.

SEC 5 Section 77 of said code is repealed

77- Each member of the commission shall receive twenty dollars (\$20) for each day's actual attendance at meetings of the commission and his actual and necessary traveling expenses incurred in the performance of his duty as a member.

SEC 6 Part 5 (commencing with Section 1460) of Division 2 of said code is repealed

SEC 7 Part 1 (commencing with Section 15000) of Division 13 of the Health and Safety Code is repealed

SEC 8 Part 1 5 (commencing with Section 17910) is added to Division 13 of said code, to read.

PART 15 REGULATION OF BUILDINGS USED FOR HUMAN HABITATION

CHAPTER 1 GENERAL PROVISIONS

17910 This part is known as the "State Housing Law"

17911. The provisions of this part do not apply to any building regulated by Part 2 or Part 21 of this division

CHAPTER 2 RULES AND REGULATIONS

17920 As used in this part "department" means the Department of Industrial Relations acting through the Division of Housing

17921 The department shall adopt, amend, repeal, and except as hereinafter provided, enforce rules and regulations for the protection of the public health, safety, and general welfare governing the erection, construction, enlargement, conversion, alteration, repair, moving, removal, demolition, occupancy, use, height, area and maintenance of all buildings and structures within the jurisdiction of this State, and in order to interpret and make more specific any laws of this State which the department is to enforce Such rules and regulations may include a schedule of fees to pay the costs of enforcement under Sections 17953 and 17965

17922 The rules and regulations adopted, amended, or repealed from time to time pursuant to this chapter shall include provisions imposing requirements equal to or more restrictive than those contained in the Uniform Housing Code, 1958 Edition, the Uniform Building Code, 1958 Edition, as adopted by the International Conference of Building Officials, the Uniform Plumbing Code, 1958 Edition, as adopted by the Western Plumbing Officials Association, and the National Electrical Code, 1959 Edition (1960 Printing), as adopted by the National Fire Protection Association The department shall adopt such other rules and regulations as it deems necessary to carry out the provisions of this part In promulgating rules and regulations the department shall consider any amendments to the uniform codes referred to in this section In promulgating rules and regulations the department shall also consider, among other things, geographic, topographic and climatic conditions

17923. The provisions of Section 17922 are not intended to prevent the adoption of rules and regulations related to the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed by the uniform codes referred to in that section, providing such alternate has been approved The department may approve any such alternate if it finds that the proposed design is satisfactory and that the material, appliance, installation, device, arrangement, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the uniform codes referred to in Section 17922 in quality, strength, effectiveness, fire resistance, durability, safety, and for the protection of life and health

17924 The department or the commission, sitting as an appeals board, may authorize the substitution of any material, appliance, installation, device, arrangement, method or type of construction for that which is prescribed in its rules and regulations under either of the following conditions:

(a) When and where the department or the commission, sitting as an appeals board, determines that there exists a critical shortage of the material, appliance or device prescribed

(b) When and where, in the judgment of the department or the commission, sitting as an appeals board, the substitution will not create a hazard to the health or safety of the public or of the occupants of buildings.

17925 Rules and regulations shall be promulgated pursuant to the Administrative Procedure Act (Chapter 4, commencing with Section 11370, of Part 1 of Division 3 of Title 2 of the Government Code), and subject to the provisions of Sections 18900 to 18911, inclusive, of the Health and Safety Code

CHAPTER 3 STATE HOUSING COMMISSION

17930 There is in the department the State Housing Commission consisting of the Chief of the Division of Housing, who shall be the chairman, and 10 members to be appointed by and serve at the pleasure of the Governor

17931 Of the 10 members to be appointed by the Governor, one shall be a person representing local fire prevention agencies, one person shall represent local health agencies, one person shall be a local building official, one person shall represent organized labor, one shall be an architect, one shall be a consulting engineer, one shall represent agriculture, one shall be a contractor active in housing construction; one shall represent privately operated apartment housing owner-management, and one shall represent privately operated hotel-motel owner-management

17932 The commission shall elect a vice chairman annually from among its members

17933 The members of the commission shall serve without compensation. Members who are not state officers shall be paid actual necessary travel expenses.

17934 The commission may determine policies for the guidance of the department in all matters concerning the administration of any laws which the division is to enforce, and shall advise the department on policies relating to the powers and duties of the department in all matters relating to housing

17935 The commission shall sit as an appeals board and may promulgate rules pertaining to hearing appeals and other matters falling within its jurisdiction. All such rules shall be made in accordance with the provisions of the Administrative Procedure Act (Chapter 4, commencing with Section 11370, of Part 1 of Division 3 of Title 2 of the Government Code)

17936 Any person who opposes any proposed rule or regulation of the department or the amendment or repeal thereof, at a hearing held for that purpose, may within 10 days after the filing of the rule or regulation with the Secretary of State request a hearing before the commission sitting as an appeals board. If a hearing is requested the matter may be heard by the commission within 120 days from the date of the request, upon a determination by the commission that the request involved a question of substance, and the proposed regulation or the amendment or repeal thereof shall not become effective until

and unless the commission has finally approved it. Upon approval notice shall be given by the commission and the regulation, amendment, or repeal shall become effective in the same manner and after the same period as provided in the Administrative Procedure Act (Chapter 4, commencing with Section 11370, of Part 1 of Division 3 of Title 2 of the Government Code), and subject to the provisions of Sections 18900 to 18911, inclusive, of the Health and Safety Code.

17937 The commission, sitting as an appeals board, shall hear appeals brought by any person as to the application of any rule or regulation of the department to such person under any facts and circumstances presented to the commission by such person alleging that the application or enforcement of any such rule or regulation by the department under such facts and circumstances is an erroneous or unlawful application or enforcement of such rule or regulation by the department.

17938 A decision of the commission sitting as an appeals board is final, except for such action as may be taken by a court as permitted or required by law.

17939 The commission shall determine its quorum, and all of its meetings shall be open and public.

17940 All records of the commission shall be open to inspection by the public during regular office hours.

17941 The commission shall biennially submit a report of its activities, together with recommendations for legislation, to the Governor and the Legislature.

CHAPTER 4 APPLICATION AND SCOPE

17950 The provisions of this part and the rules and regulations promulgated pursuant thereto which relate to apartment houses, hotels, and dwellings apply in all parts of the State.

17951 The governing body of any city or county may enact ordinances or regulations imposing restrictions equal to or greater than those imposed by this part and rules and regulations promulgated pursuant thereto or prescribing fees for permits, certificates, or other forms or documents required by this part or rules and regulations promulgated pursuant thereto.

17952 (a) Whenever a city or county proposes to enact ordinances or regulations in accordance with the provisions of this chapter, such city or county shall deliver sufficient copies of such proposed ordinances or regulations to the department.

(b) The department shall within 90 days notify such city or county in writing whether or not such local regulations prescribe standards equal to or greater than those prescribed by this part and the rules and regulations promulgated pursuant thereto. Upon each resubmission of a proposed ordinance or regulation, the department shall notify such city or county of its determination within 30 days. Any determination by the department under this section is subject to appeal within 30 days in writing to the State Housing Commission sitting as an appeals board.

17953 In the event of nonenforcement of any ordinance or local regulation adopted pursuant to Section 17951, the provisions of this part and the rules and regulations promulgated thereunder shall be

enforced by the department in any such city or county after the department has given written notice to the governing body of such city or county of a violation of this part or the rules or regulations promulgated thereunder and the city or county has failed to secure correction of the violation within 30 days of the date of such notice.

CHAPTER 5 ADMINISTRATION AND ENFORCEMENT

Article 1 Enforcement Agencies

17960 The building department of every city shall enforce within the city all the provisions of this part and rules and regulations promulgated thereunder pertaining to the erection, construction, reconstruction, movement, conversion, alteration, or arrangement of apartment houses, hotels, or dwellings.

17961 The housing department or, if there is no housing department, the health department, of every city shall enforce within the city all the provisions of this part and rules and regulations promulgated thereunder pertaining to the maintenance, sanitation, ventilation, use, or occupancy of apartment houses, hotels, or dwellings.

17962 If there is no building department, housing department, or health department in a city, the officer who is charged with the enforcement of ordinances or laws regulating the erection, construction, alteration, maintenance, sanitation, ventilation, or occupancy of buildings, or of the police, fire, or health regulations, in the city, shall enforce within the city all the provisions of this part and rules and regulations promulgated thereunder.

17963 In every county the officer who is charged with the enforcement of ordinances or laws regulating the erection, construction, alteration, maintenance, sanitation, occupancy, or ventilation of buildings, or of the police, fire, or health regulations, in the county, shall enforce outside the territorial limits of any city, all the provisions of this part and the applicable rules and regulations promulgated thereunder pertaining to apartment houses, hotels, or dwellings.

17964 Where there is no such department or officer mentioned in Section 17960 to 17963, inclusive, any city or county may designate and charge by charter, ordinance or resolution any department or officer, other than a department or officer mentioned in this chapter, with the enforcement of any or all of the provisions of this part and rules and regulations promulgated thereunder within its territorial limits.

17965 Where there is no local enforcement agency, the department shall enforce all the applicable provisions of this part and rules and regulations promulgated by the department thereunder pertaining to apartment houses, hotels, or dwellings.

17966 Cities or counties may contract with the department for assistance by the department in the enforcement of the applicable provisions of this part and the rules and regulations promulgated thereunder within such cities or counties by the department. Such contracts shall contain provisions for the payment of the costs of such enforcement, or portions thereof, as may be determined by the department.

Article 2 Inspection

17970 Any officer, employee, or agent of an enforcement agency may enter and inspect any building or premises whenever necessary to secure compliance with, or prevent a violation of, any provision of this part and rules and regulations promulgated thereunder which the enforcement agency has the power to enforce

17971 The owner, or authorized agent of any owner, of any building or premises may enter the building or premises whenever necessary to carry out any instructions, or perform any work required to be done pursuant to this part and rules and regulations promulgated thereunder

17972 No person authorized by this article to enter buildings shall enter any dwelling between the hours of 6 o'clock p.m. of any day and 8 o'clock a.m. of the succeeding day, without the consent of the owner or of the occupants of the dwelling, nor enter any dwelling in the absence of the occupants without a proper written order executed and issued by a court having jurisdiction to issue the order

Article 3 Actions and Proceedings

17980 If any building is constructed, altered, converted, or maintained in violation of any provision of, or of any order or notice giving a reasonable time to correct such violation issued by an enforcement agency pursuant to, this part and rules and regulations promulgated thereunder, or if a nuisance exists in any building or upon the lot on which it is situated, the enforcement agency shall after 30 days' notice to abate such nuisance institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance

17981 An enforcement agency which institutes any action or proceeding pursuant to this article may, by verified complaint setting forth the facts, apply to the superior court for an order granting the relief for which the action or proceeding is brought until the entry of a final judgment or order

17982 If any notice or order issued by an enforcement agency is not complied with within a reasonable time as specified in such notice or order the enforcement agency may apply to the superior court for an order authorizing it to remove any violation or abate any nuisance specified in the notice or order

17983 The superior court may make any order for which application is made pursuant to this article

17984 Neither an enforcement agency, any of its officers, nor any city or county for which an enforcement agency may act, is liable for costs in any action or proceeding that the enforcement agency may commence pursuant to this article

17985 Any enforcement agency which institutes an action or proceeding pursuant to this article may file a notice of the pendency of the action or proceeding in the county recorder's office of the county where the property affected by the action or proceeding is situated. The notice may be filed at the time of the commencement of the action or proceeding, or at any time before final judgment or order. It has the same effect as the notice of pendency of action provided for in the Code of Civil Procedure

17986 The county recorder with whom a notice of pendency of action or proceeding is filed shall record and index it in the name of each person to be specified in a direction subscribed by an officer of the enforcement agency instituting the action or proceeding

17987. Any notice of pendency of action or proceeding may be vacated upon the order of a judge of the court in which the action or proceeding is pending. A certified copy of the order of vacation may be recorded in the office of the recorder of the county where the notice of pendency of action is recorded

17988 In any action or proceeding brought pursuant to this article, service of summons is sufficient if served in the manner provided in the Code of Civil Procedure

17989 Except under conditions immediately affecting health or safety, every notice or order issued pursuant to this part shall be served five days before the time for doing or refraining from doing the thing to which it pertains

Chapter 6 Violations

17995 Any person who violates any of the provisions of this part or any rule or regulation promulgated pursuant thereto is guilty of a misdemeanor, punishable by a fine not exceeding five hundred dollars (\$500) or by imprisonment not exceeding six months, or by both such fine and imprisonment

Sec 9 Rules and regulations promulgated pursuant to the provisions of Part 15 (commencing with Section 17910) of Division 13 of the Health and Safety Code as added by Section 8 of this act relating to the erection or construction of buildings or structures shall not apply to existing buildings or structures or to buildings or structures as to which construction is commenced or approved prior to the effective date of the rules or regulations, but regulations relating to use, maintenance, and change of occupancy shall apply to all buildings and structures approved for construction or constructed before or after the effective date of such rules or regulations

Sec 10 The provisions of Part 1 (commencing with Section 15000) of Division 13 of the Health and Safety Code, with the exception of Chapter 3 (commencing with Section 15250) and Chapter 28 (commencing with Section 17900) of such Part 1, are continued in effect as rules and regulations of the Department of Industrial Relations, Division of Housing, and shall remain in effect as such rules and regulations until amended or repealed pursuant to the State Housing Law

APPENDIX I
ASSEMBLY INTERIM COMMITTEE ON PUBLIC HEALTH
SUBCOMMITTEE ON FIRE PROTECTION AND
RESIDENTIAL SAFETY

ADVISORY COMMITTEE

Chairman Mr. Byron Nishkian
 Secretary Chief John G. Degenkolb

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 Mr. Lowell Nelson, Chief
 Division of Housing
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 Senior Sanitary Engineer
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 Senior Building Code Analyst
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 Sacramento 14, California

State Fire Marshal
 Chief Ray Shukraft
 State Fire Marshal
 1025 P Street
 Sacramento 14, California

FIRE SERVICE

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 Fire Prevention Bureau
 Los Angeles Fire Department
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 Los Angeles 12, California

California Fire Chiefs Association
 Chief Chester W. Moller
 Past President California State Fire-
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 Chairman, Legislation Committee,
 California Fire Chiefs Association
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TRAILER COACH ASSOCIATION

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 Trailer Coach Association
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 Mechanical Engineer
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*International Conference of Building
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APPENDIX II
ASSEMBLY INTERIM COMMITTEE ON PUBLIC HEALTH
SUBCOMMITTEE ON FIRE PROTECTION AND
RESIDENTIAL SAFETY

ADVISORY COMMITTEE REPORT

August 1960

Premises

- A The Housing Act is going to be revised
- B The Housing Act should apply uniformly throughout the State, in unincorporated areas as well as in incorporated areas. This decision is made in full awareness of the political problems involved.
- C The Housing Act should state minimum standards of housing which all local areas should be required to meet
- D. The Housing Act should be an enabling act and should assign to an appropriate administrative agency the function of adopting regulations. Only in this way can the housing requirements be kept up-to-date.

I. Purposes of a Housing Act

a Functions of a Housing Act

The function of a housing act is *solely* to provide *minimum standards* for health, safety, and living conditions, which apply throughout the State

b. Content of a Housing Act

A State Housing Act can and should be concerned with problems of

- 1. Construction standards
- 2 Facilities and equipment standards, such as electrical, mechanical, sanitary and fire protection standards
- 3. Maintenance
- 4. Conditions of occupancy

II. Administration

- a The administration of the Housing Act should be under the direction of one agency on the state level
- b This state agency should pass upon and approve housing standards to be adopted by the State
- c The board should serve as an appeals board to hear complaints of builders, cities, and other interested parties regarding regulations and enforcement.
- d. Principal responsibility for enforcement of the Housing Act should rest upon the local governments, which would be required to designate some enforcement agency. Where the local government does

not have personnel to administer the act, it should be able to contract with the state agency for the performance of these services.

- e If the local government does not enforce the minimum standards of the State Housing Act, then it should be mandatory that the State enforce these standards
- f The provisions of the existing State Housing Act, Chapter No. 3, "Administrative Enforcement, Article 1, Enforcement Agencies," should be continued in the statutory requirements itself. There is, however, a certain need for amendment to make certain that the appropriate agencies are designated for enforcement. At present it is too easy to redesignate enforcement by agencies not properly qualified

III. *State Housing Act vs. Local Building Codes*

- a Each city and county may enact its own housing code. Local building regulations equal to or more restrictive will supersede any state regulation, either jurisdictional or administrative
- b. Every local housing regulation pertaining to the occupancies covered in the State Housing Act, will be subject to review by the state agency to determine whether or not it is equivalent to or less restrictive than the State Housing Act

IV. *Type of Housing Act*

- a. In that the present State Housing Act has a statutory provision, it cannot be changed except by act of the Legislature. This is a cumbersome and unsatisfactory method by which to effect change
- b. The Housing Act should be an enabling act delegating authority to write regulations on the subjects presently contained in the State Housing Act to an administrative body. This will permit participation of affected groups, including industry, in the adoption of regulations in accordance with the provisions of the Administrative Procedure Act. Further, it will permit the adoption of regulations to reflect rapid technological changes and obviate the need to amend the basic act at biennial legislative sessions. (One suggestion was that the enabling act authorize the Division of Housing to operate under an Administrative Code. The Chief of the Division of Housing would then continue in his present position, serving under the guidance of an advisory board made up of building, health and fire authorities. This advisory board would be different in this respect from the present housing commission which is now composed of a cross section of representation of the people and is without technical representation from building, health and fire officials.)
- e. Any building regulations which it is felt necessary to retain in the State Housing Act should be written either.
 - 1 To incorporate by reference some standard building code, or
 - 2 To state performance standards, and avoid wherever possible, specification standards

V. *Applicability of a Housing Act*

- a All types of places of general human habitation are housing and hence should be subject to the minimum standards of a State Housing Act
- 1 Although the general policy statement above comprehends non-structural units, such as trailers, houseboats, tent camps, and labor camps, all of which are used as permanent places of human habitation, it is recommended that the Advisory Committee devote its attention first to hotels, apartments and single and multiple family dwelling units and take up later as special problems the other types of habitation since they require somewhat different treatment in order to obtain substantially different equivalent standards. A special subcommittee on trailers will be appointed by the chairman of the advisory committee. The staff will write followup letters to representatives interested in trailers, trailer parks, liquefied petroleum gas, and farm labor
- b The Housing Act should apply uniformly throughout the State in unincorporated areas as well as in incorporated areas. (The present provisions of the State Housing Act apply to all residential construction within incorporated areas, but apply only to apartment houses and hotels in the unincorporated areas.)
- c Retroactivity
It is recommended that the issues of retroactive legislation be postponed until the advisory committee has compiled a definite proposal for a housing act. A special subcommittee on retroactivity will be appointed by the advisory committee chairman. Retroactive provisions should be based only on those items which are hazards to life, health and limb.

VI. *Items Requiring Immediate Attention*

If it should become evident that there is no possibility of gaining correction in the next legislative session, as suggested above, there is still need for *immediate* change so that improved safety may be gained. The items which require immediate attention are:

- a Retroactive legislation aimed at correcting the hazardous conditions which presently exist in multistory housing occupancies due to unenclosed vertical shafts, i.e., open stairs. Some means of protection is highly essential.
- b A requirement that each bedroom in all housing facilities be provided with at least one window or escape panel through which the occupant of the room may have a reasonable expectation of escape.
- c A requirement that all multistory buildings have more than one means by which to escape from an upper floor.
- d Improved regulation of heating equipment and systems.
- e A consideration of the imposition of more stringent regulations on the materials used for the interior finish of housing occupancies, as well as an investigation into the use of flammable, readily combustible materials, or materials which emit voluminous quantities of smoke or injurious gases, be they decorative materials, wall or ceiling finish, furniture, etc.

- f An investigation into the continued use of shingles in certain high hazard areas, such as brush-covered hillside areas, or very closely built up residential areas
- g In that the State Housing Act makes no adequate reference to requirements for the use of liquefied petroleum gases (butane, propane, etc) in housing occupancies, a chapter on such usage is very essential
- h The existing provisions with regard to electrical usage are not adequate

VII. *Financing*

Two specific plans were proposed for the financing of this new administration

a *The Chadders Plan*

Uniform building inspection fees would be set for the entire State. If the local governments properly enforced the standards of the State Housing Act, then the fees would be paid to the local government. However, if the local government failed to so enforce the housing act, such fees would be paid to the State to carry the burden of enforcement.

b *The Richards Plan*

Amounts of building fees should be left to the determination of the local governments. However, if the local government does not enforce the minimum standards of the State Housing Act, then the State should enforce the act and bill the local government for the cost of enforcement.

(The Richards Plan was preferred by several members because of the greater freedom given to the local government. The fact that some local governments may adopt standards stricter than those of the State thus requiring a different fee schedule for enforcement was also mentioned as an argument in favor of the Richards Plan.)

VIII. *Recommendations for Future Action*

- a Where codes were incorporated by reference the following codes should be used

Building Code	—Uniform Building Code of the International Conference of Building Officials
Electricity	—National Electrical Code
Plumbing	—Uniform Plumbing Code of the Western Plumbing Association

- b Subcommittee on Outlines for Future Study look into the possibility of having all residential construction regulated by one standard, including housing for migratory laborers
- c Subcommittee on Outlines for Future Study look into the possibility of setting up regulations for electricity and plumbing and sewage disposal in unincorporated areas (Health Department representatives indicate there is a definite need for such regulations)
- d Subcommittee on Outlines for Future Study review, and if they see fit, propose new or revised subdivision requirements for unincorporated areas.

- e The problems of costs of enclosing stairways in existing hotels was referred to the California State Hotel Association for estimates of costs and amortization of such costs
- f The Legislative Counsel should be written and asked for legal opinions on the constitutionality and legal problems involved in
 - 1 The Childers Plan
 - 2 The Richards Plan
 - 3 Streamlining nuisance abatement procedures by administrative regulations
- g. Letters should be written to the following representatives of local government, asking them to join the discussions of the advisory committee whenever possible
 - 1 Mr Richard Carpenter, League of California Cities
 - 2 Mr William R MacDougall, County Supervisors Association of California

APPENDIX III

From the San Francisco Chronicle
(The Voice of the West)

Tuesday, November 1, 1960

Potential Disaster

SCHOOL CHECKUP HERE UNCOVERS 'FIRE TRAPS'

The disastrous 1958 fire at Our Lady of the Angels School in Chicago, which took 95 lives, could happen in San Francisco, the city's fire prevention chief warned yesterday.

He said "many" of the city's 130 public schools are potential fire traps in which children could be cut off from rescue.

More than half the buildings are constructed of combustible materials, he said, and even in the remainder additional safety precautions should be taken.

The report, Mayor Christopher said, verified the "deep apprehension I've had, about our old schools particularly."

He pledged help from City Hall "to take all steps necessary to protect our children."

If need be, he said, the city might find emergency funds "to take care of the more urgent needs."

The preliminary report, which did not itemize the dangers nor list the schools in which they exist, came after a two-year study by Chief Albert E. Hayes. It was sought by the Board of Education and the Mayor as a result of the Chicago disaster.

"Generally speaking the schools were found to be in good condition as far as general maintenance and housekeeping are concerned," he wrote to Dr. Harold Spears, the Superintendent of Schools.

"However, due to the structural conditions in some buildings, a serious school fire could occur in San Francisco."

He drew a specific comparison between "many" public schools here and the Chicago school, in which the fire originated in the basement and spread to the second floor by a stairway.

All 95 who perished were on the second floor. They could have escaped by another stairway, but were overcome by smoke and fumes.

Children on the first floor, protected by a safety door that kept the smoke out, were able to leave when the alarm sounded.

"There are many San Francisco school buildings which do not have these stair enclosures," Chief Hayes wrote.

He listed four other major hazards.

- Even on stairways with safety doors, the doors often are left open;
- Potential fire areas are not protected by sprinkler systems;
- Buildings of combustible construction are in excess of one story in height, and

● There is no "reliable and approved" means of turning in a fire alarm. (The School Board, however, already has taken steps to install such a system)

Chief Hayes listed eight recommendations to provide what he called "minimum" safeguards for the school children

Alarm

They included keeping the stairway doors closed except when monitored, and installing fire alarm systems that would alert the children and the fire department simultaneously

Also, he said, buildings of combustible construction should be protected by sprinkler systems, as should the so-called "fire-proof" buildings if their stairways are not enclosed by safety doors

These sprinkler systems, the chief said, should be tied in to an automatic alarm system, a project the school board already has rejected because its cost would be so high.

Comment

Doctor Spears was out of town yesterday and not available for comment

Elmer Skinner, president of the Board of Education, said the board will "do everything that's found to be immediately necessary to safeguard our children "

He said the new fire alarm systems being installed are "the first step" toward providing more complete protection.

The matter, he said, would be fully discussed at the school board meeting tonight

Others in the school department said the cost of Chief Hayes' recommendations could not be estimated until the school-by-school report is made

A sprinkler system, however, costs about \$35,000 a school. If half the 130 schools were in need of such protection, the cost would be more than \$2 million.

Chief Hayes said he will issue a similar report in the near future on private and parochial schools in the city

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ASSEMBLY INTERIM COMMITTEE REPORTS

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CALIFORNIA LEGISLATURE

ASSEMBLY INTERIM COMMITTEE ON PUBLIC HEALTH

W. BYRON RUMFORD, *Chairman*

SUBCOMMITTEE ON AIR POLLUTION

Motor Vehicle Created Air Pollution
A Control Program for California

MEMBERS OF SUBCOMMITTEE

RONALD BROOKS CAMERON, *Chairman*

CLAYTON A. DILLS

MILTON MARKS

DON MULFORD

W. BYRON RUMFORD

CHET WOLFRUM

DIANA CLARKSON, *Consultant*



December, 1960

Published by the

ASSEMBLY
OF THE STATE OF CALIFORNIA

HON. RALPH M. BROWN
Speaker

HON. WILLIAM A. MUNNELL
Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore

HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk

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The purpose of this report is to:

1. Report to the Legislature on the study conducted by this subcommittee during the 1959-61 interim and on the legislation introduced and enacted as a result thereof.
2. Present information on the nature and extent of California's air pollution problem and specifically motor vehicle created air pollution.
3. Present recommendations for further study and action needed to conserve California's air resource.

COMMITTEE LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON PUBLIC HEALTH
December 7, 1960

HON RALPH M BROWN, *Speaker*
Members of the Assembly
Assembly Chamber

GENTLEMEN The Assembly Interim Committee on Public Health submits this report on motor vehicle created air pollution prepared by the Subcommittee on Air Pollution in accordance with House Resolution No. 131 of the 1959 Session.

Respectfully submitted,

W. BYRON RUMFORD, *Chairman*
Assembly Interim Committee
on Public Health

SUBCOMMITTEE LETTER OF TRANSMITTAL

December 7, 1960

HON. W. BYRON RUMFORD, *Chairman*
Assembly Interim Committee on Public Health

DEAR MR. RUMFORD: Attached is the report of the Subcommittee on Air Pollution which was directed by the Public Health Committee to study the particular air pollution problem caused by motor vehicles in California.

It has long been known that the motor vehicle is a major cause of air pollution, yet no means had been devised to effect its control. Your subcommittee appointed an advisory committee to assist it in developing a specific control program. It was in large part because of the assistance provided by this committee that legislation establishing this needed control program was enacted during the 1960 Session. The subcommittee wishes to express its appreciation to all those who served so diligently on the advisory committee.

Respectfully submitted,

RONALD BROOKS CAMERON, *Chairman*
Subcommittee on Air Pollution

CLAYTON A. DILLS
MILTON MARKS
DON MULFORD

W. BYRON RUMFORD
CHET WOLFRUM

CONCLUSIONS AND RECOMMENDATIONS

Clean air is a resource which is vital to the health and welfare of the people of California. While only 20 years ago smog was an occasional phenomenon restricted to the Los Angeles metropolitan area, today its effects have been detected in 25 of the State's 58 counties. Increased state and local efforts are essential for the preservation of California's air resource, to reduce the spread of air pollution into even wider areas of the State and to restore good air quality to those areas presently suffering the effects of polluted air. This can be achieved only by control over all sources which emit pollutants into the atmosphere—the stationary sources which are the responsibility of local county and district air pollution control agencies, and the mobile source, the motor vehicle, which is now the responsibility of the State in co-operation with local agencies.

The State's more than 8,000,000 motor vehicles are major contributors to smog. Legislation establishing a program for their control introduced by this committee and requested by the Governor was enacted by the 1960 Legislature. A Motor Vehicle Pollution Control Board was created to administer the program. The board is responsible for establishing a system for adopting criteria for and approving control devices and a program for the installation of such devices on California's motor vehicles. The program is to be operative throughout the State with regard to new vehicles, provision is made for counties to exempt themselves from the program with regard to used vehicles if they determine that the air quality in the area does not fall below the air quality standards established by the State Department of Public Health. Rapid implementation of this legislation and widespread participation in the control program is essential for solving California's smog problem.

It is recommended that:

- (a) The Motor Vehicle Pollution Control Board proceed as rapidly as possible, consistent with the best interests of the motoring public, with instituting the control program.
- (b) The State Department of Public Health expand its program of providing assistance to counties in the establishment of effective monitoring systems to permit an assessment of air quality throughout the State. This is particularly important since county participation in the control program with regard to used vehicles is dependent on knowledge of air quality within the county, and since such information is necessary to permit an evaluation of the motor vehicle pollution control program.

Standards for ambient air and motor vehicle exhaust emissions have now been established by the State Department of Public Health. These standards, which will be refined and improved as further information is gathered on the effects of various components of smog, serve

as important guide lines for local and state control programs. These standards will require revision as further information is developed. The department has already been directed by legislation introduced by this committee and enacted by the 1960 Legislature to set standards for total vehicular emissions rather than just exhaust emissions.

Motor vehicle emission standards are basic to the new state control program in that the Motor Vehicle Pollution Control Board has been directed to approve only those control devices which meet the standards. Standards have now been set for exhaust emissions of hydrocarbons and carbon monoxide both of which are emitted by today's gasoline-powered motor vehicle. Although the diesel engine is not believed to emit those pollutants in excess of the present standards, it does emit black smoke and fumes which constitute a local nuisance. Control programs to limit such emissions have been assumed by the California Highway Patrol and the Los Angeles Air Pollution Control District. The diesel is believed in addition to emit other pollutants such as oxides of nitrogen, aldehydes and other irritants not now included in the state standards.

It is recommended that the State Department of Public Health:

- a. Increase its research into the toxicity of the various air pollutants and as soon as feasible implement and improve its standards for ambient air and motor vehicle emissions
- b. Establish a standard for total vehicular emissions as soon as possible in accordance with the 1960 legislative directive
- c. Obtain data as to the identity of pollutants and irritants emitted from the diesel engine, as to the part they may play in photochemical smog creation, and as to the effects of specific irritants on the public health and well-being on both a localized and a community-wide basis
- d. Study the problem of localized air pollution and the possible need for standards or control with regard to this problem as distinguished from the community-wide air pollution problem which now is being considered through the establishment of ambient air standards.

It is recommended that the California Highway Patrol:

Continue its program to control emissions from the smoky diesel

It is further recommended that:

- a. The 1961 Legislature approve the Department of Public Health budget as necessary for an expanded program of research into the nature of specific air pollutants to permit refinement and improvement of the standards, and for an expanded monitoring program to assist counties assess their air pollution problem
- b. This committee continue its study of California's air pollution problem with specific attention to the program of the Motor Vehicle Pollution Control Board, the problem of the diesel-powered motor vehicle, and the program of the Department of Public Health as it relates to the implementation of ambient air and motor vehicle emission standards and air monitoring

INTRODUCTION

"Clean, clear air is a natural resource which is vital to people, to plants, to our health and prosperity. If we fail to preserve and protect this resource, if we stand idle watching it become polluted by the curse of smog, the consequences will plainly be drastic . . . In the current year, we must make substantial further progress in the battle against air pollution. For that reason, I have placed air pollution legislation on the very restricted agenda for the special session of the Legislature" Governor Edmund G. Brown, 1960.

A major step in California's battle against smog was taken by the 1960 Legislature when it enacted legislation introduced by this subcommittee to control motor vehicle created air pollution. Air pollution is an unwanted and unplanned by-product of California's rapidly increasing population. Its sources, basically the activities of the State's fifteen and a half million people, are well known. They include industrial and agricultural activities and, to an ever-increasing degree, the 8 million motor vehicles now operating on the highways of the State.

Only 20 years ago, smog was an occasional phenomenon restricted to the major metropolitan areas of the State. Since then, smog episodes have increased in frequency and intensity in metropolitan areas and have occurred with startling frequency in non-metropolitan areas of the State. Air pollution today is a statewide problem, which must be met by positive and imaginative local, regional, and state action.

Legislation establishing a statewide program to control motor vehicle created air pollution has now been enacted. As the program develops under this legislation, new legislation will doubtless be needed. But within the foreseeable future, as a result of this legislation, we can anticipate that one more major source of air pollution will be controlled. This, it should be emphasized, cannot be considered the ultimate solution. This program will not solve California's smog problem. It will alleviate it. It does, however, represent one essential step forward in solving a vital state problem.

THE COMMITTEE STUDY

The air pollution problem has been of continuing concern to the people of the State, the Legislature and this committee. The concern has been reflected by the enactment of air pollution legislation in each session of the Legislature since 1947.

The 1959 report of the committee,¹ in recognition of the seriousness of the problem and specifically the role of the motor vehicle in the creation of air pollution recommended, and the 1959 Legislature enacted A B 1368 requiring the State Department of Public Health to establish standards for air quality by February 1, 1960. The board was directed to set standards for motor vehicle exhaust emissions by that same date by the enactment of a related measure, S B 117.²

¹ California Legislature, Assembly Interim Committee on Public Health, Subcommittee on Air Pollution, *Air Pollution, Its Health Effects and Its Control*, Vol. 9, No. 17, March 1959.

² See Appendix II for copies of this legislation.

In addition in 1959, the committee authored and the Assembly passed

1 House Resolution No. 32 urging the "motor vehicle manufacturers of the US to expedite research on a motor vehicle exhaust control mechanism . . . and to report to the nation and to the State of California as soon as possible on its constructive accomplishments to date, the work now under way, and work planned, including a time schedule and a date when an effective motor vehicle exhaust control device will be available "

2 House Resolution No. 131, which stated that, "Whereas, air pollution is presently a hazard to the health of the people of this State; and whereas, the control of automobile exhaust products is an essential part of any plan to solve the air pollution problem . . ." an appropriate legislative committee shall make a study to determine what steps are needed to establish a system for the control of motor vehicle created pollution

This Subcommittee on Air Pollution was appointed pursuant to H.R. No. 131. It initiated its study recognizing that its primary task was to recommend a specific program to control this one source of air pollution. To assist it with this task, the following persons, representative of agencies, organizations and interests most conversant with the problem, were appointed to serve on an advisory committee

ADVISORY COMMITTEE ON MOTOR VEHICLE EXHAUST CONTROL

Professor John T. Middleton, Chairman

University of California, Riverside

Alan G. Anderson, Secretary

Private Truck Owners Bureau of California

John A. Maga
State Department of Public Health

Edward M. Stutz
Department of Motor Vehicles

Warren Heath
California Highway Patrol

S. Smith Griswold
Air Pollution Control Officer
Los Angeles Air Pollution Control
District

Benjamin Lusky
Air Pollution Control Officer
Bay Area Air Pollution Control
District

Dr. W. L. Faith
Air Pollution Foundation

Edward Riley
Automobile Manufacturers
Association

Professor A. J. Haagen-Smit
California Institute of Technology

J. C. Spencer
California State Automobile
Association

Amos T. Crowl
Northern California Motor Car
Dealers Association, Inc.

Gerald Fisher
Western Oil and Gas Association

The advisory committee met on numerous occasions between the first organizational meeting with the subcommittee on October 27, 1959, in Berkeley and the final meeting with the subcommittee on January 18, 1960, in Sacramento

The advisory committee presented its report to the committee on December 17 at a meeting held at the University of California campus in Riverside¹

¹ See Appendix III for full report

At the meeting on January 18, the advisory committee reviewed a tentative draft of a bill based on its recommendations. Following additional conferences with members of the advisory committee and other interested groups, the committee bill, A B. 17, was introduced on March 2, 1960. The bill, with amendments, became law when it was signed by the Governor on April 14, 1960.¹

A companion bill, A B. 19, introduced by the committee and enacted by the Legislature, directed the Department of Public Health to include total motor vehicle emissions rather than merely exhaust emissions when setting its motor vehicle emission standards.²

¹ See Appendix I.

² See Appendix II.

AIR POLLUTION IN CALIFORNIA

Practically all air is contaminated to some extent. As the activities of man in our industrialized society have increased so has the amount of contamination. Such contamination becomes an air pollution problem when it begins to interfere in some way with the well-being of people.

This is the case in ever-widening areas of California. California's geography and weather, attractions responsible for California's phenomenal population growth, create an ideal laboratory for the creation of smog. Throughout the length of the State, weather and geographic factors favoring the accumulation of air pollutants are found. A ceiling of warm air, known as the inversion layer, the mountainous terrain, and California wind patterns combine to prevent the dissipation of air pollutants. These pollutants, consisting of a complex mixture of gases, solid particles, and liquid droplets, combine in the atmosphere to form hundreds of different compounds. Their sources include industrial activities of all kinds, petroleum refining, the manufacturing, processing and chemical industries; the storage and marketing of petroleum products; agricultural burning, spraying, and cultivating, domestic and industrial heating; refuse incineration and disposal, and, of ever-increasing importance, the operation of automobiles and trucks on highways throughout the State.

Two basic types of air pollution are experienced today in California. The first is the typical California photochemical air pollution created by the atmospheric reaction of organics and nitrogen oxides. Upon exposure to sunlight, these two families of chemical compounds react with each other to form new families of chemical compounds which cause irritation to the senses, plant damage, and visibility reduction. The second type of air pollution is that resulting from the emission of specific and identifiable contaminants in solid, liquid, or gaseous states which can have detrimental effects on either a localized or areawide basis or both. These include visible point source smoke and dust emissions as well as such gases as carbon monoxide, sulfur dioxide, fluoride, ammonia, chlorine, and sulfur which are detrimental in the form in which they are emitted into the atmosphere.

The severity and nature of the air pollution problem varies in different parts of the State, depending on particular local geographical and weather conditions, the density of population and extent and nature of local activities.

In urban areas, the principal problem is with photochemical smog, and in these areas, the intensity and frequency of air pollution attacks continue to increase. In nonmetropolitan areas air pollution is still largely connected with agriculture, the lumber industry and other point-source problems. However, there has been increasing evidence of intrusion of photochemical smog into these areas. It has been found that photochemical smog is not confined to the area in which it originates. The chemical compounds, which are responsible for its formation move about with the moving air mass that flows over cities and spill out into rural California.

Plant damage attributable to photochemical air pollution is known to be an accurate barometer of an area's potential smog problem. It now occurs in 25 counties in California ranging from the south coastal basins of Los Angeles and San Diego to the San Francisco Bay area, the San Joaquin and lower Sacramento portions of the Central Valley, as seen on the accompanying map.¹ This air pollution affects a total area of 11,000 square miles in the State. Forty-four percent of this damage occurs in Central California, 40 percent in Southern California, and 16 percent in the San Joaquin Valley south of the delta.

OCCURRENCE OF PHOTOCHEMICAL INJURY TO VEGETATION, 1949-1957



Air pollution affects the well-being of people in many ways; some of these are measurable, some are not. But all the indices now available show that the problem is an ever-enlarging and growing one.

¹ Middleton, John T. and Haagen-Smit, A. J., 'The Occurrence, Distribution, and Significance of Photochemical Air Pollution in the US and Canada,' paper presented at the 53rd annual meeting, Air Pollution Control Association, Cincinnati, May 1960

California farmers suffer a direct loss of at least \$8 million a year from crops rendered unsalable by smog. Of greater significance are the incalculable or indirect losses, some crops can no longer be produced in certain parts of the State, farming with polluted air costs the farmer more money since yield is lower and quality poorer, because crops take longer to mature, labor costs increase and more water and fertilizer are needed.

Estimates of the cost to communities of some effects of air pollution have ranged from \$10 to \$65 annually for each person.¹ This estimate does not include aesthetic cost, damage to general fitness of the environment and the desirability of the community as a place to live.

Close to one-half or 45 percent of the adult population of the State reported that they were bothered by air pollution in 1956. Almost two out of five Californians throughout the State reported in a 1956 survey conducted by the State Department of Public Health that they were bothered by air pollution in their home communities. While the highest proportion of persons bothered was in Los Angeles County—more than three out of five—in the rest of the State and the San Francisco Bay area close to 20 percent, or one in five reported being bothered.² According to this same survey, some Californians have moved, chiefly away from Los Angeles, because of air pollution, while others have given serious thought to moving or changing jobs to get away from polluted areas. The number of persons who attribute moves from Los Angeles to the presence of air pollution is testimony to the fact that the present situation has led many people to feel that living in air polluted areas is unpleasant enough to cause them to leave. The magnitude of this problem cannot be calculated.

Of far greater importance is the fact that air pollution is a menace to the public's health and well-being. There is no doubt that air pollution can cause widespread illness and sometimes death. This was seen in the often publicized disasters of Donora, Pennsylvania, Meuse Valley of Belgium, and London. The Department of Public Health has said with regard to the possible health hazards of air pollution that "they include the possibility of acute illness or death from severe episodes with unusual weather conditions, the possibility of chronic disease, the possibility of physiologic impairment of function, the possibility of symptoms which ordinarily would lead to medical attention and the instability of various population groups."³

We know that air pollution damages health, but we do not know to what extent; we know that it harms agriculture, but not to what degree, we know that it limits visibility and causes eye irritation, but these effects cannot be easily measured, we know that it depresses real estate values, makes living less enjoyable, and destroys aesthetic pleasures of living in many areas of the State. Although these effects cannot now be accurately measured in dollars and cents, it is clear that they are extremely costly and this committee urges continued and increased effort to control all sources of air pollution.

¹ Gustafson, R. G., "What Are the Costs to Society?" In Proceedings, National Conference on Air Pollution, U.S. Public Health Service, Pub. No. 641, Washington, 1959, p. 4.

² California, Department of Public Health, *Air Pollution Effects Reported by California Residents*, Berkeley, 1960, p. 11 and p. 15.

³ California, Department of Public Health, *Standards for the Quality of Air, a Technical Report*, December 1959 (Unpublished).

METHODS OF AIR POLLUTION CONTROL

Varying and more effective governmental tools have been created to cope with the air pollution problem with the growing awareness of its nature and scope. Under common law, smoke and fumes were considered to be a nuisance when evident in such a quantity as to interfere with the comfortable enjoyment of life and property. This method of control was limited by the need to deal with each specific problem on an individual complaint basis and by the difficulties of the legal procedures of proving a public nuisance.

Municipal ordinances specifically directed toward air pollution control have been used in many cities of the country—including New York City, Pittsburgh, Baltimore, St. Louis, and Cleveland. Municipal control, however, was found to be inadequate in many areas principally because the political boundaries and the boundaries of the problem do not coincide.

In 1947 a county-wide approach designed to meet this objection was authorized in California when the Legislature enacted a measure enabling its counties to activate county-wide air pollution control districts. And in 1949, an amendment was adopted to permit adjoining counties to activate and operate control districts embracing their combined areas. State policy was formalized in part in the legislation which states:

"The Legislature finds and declares that the people of the State of California have a primary interest in atmospheric purity and freedom of the air from any air contaminants and that there is pollution of the atmosphere in many portions of the State which is detrimental to the public peace, health, safety, and welfare . . ."¹

The county-wide approach removed some of the deficiencies of a city-wide approach—the artificiality of city political boundaries. Yet in some areas in California, even county programs were inadequate. With realization that air pollution is no respecter of political boundaries, grew the concept of the basin-wide or wind-shed approach to air pollution control. This concept has been utilized in two areas in the State. The San Francisco Bay Area Air Pollution Control District Act of 1955 permitted the establishment of a six-county control district. The San Joaquin District Act of 1959 will permit the creation of an eight-county control district upon vote of the residents of the district. A proposal to activate this district was defeated in November, 1960.

Legislative recognition of the regional characteristics of the air pollution problem is expressed in both special district acts which state that districts including the affected area must be created since:

"The problems of air pollution are primarily regional and dependent upon factors of weather, topography, population, transportation, methods of waste disposal, and agricultural and industrial development. These factors vary greatly from area to area . . ."²

¹ Health and Safety Code, Sec. 24198, *et seq.*

² Health and Safety Code, Secs. 24246.2 and 24275.03.

The State of California has made considerable progress in air pollution control since the formation of the first district in Los Angeles County in 1947. Seven air pollution control districts are now in operation. Seventy-nine percent of the state population in 12 of the State's 58 counties live in these districts. (See Table 1.)

TABLE 1
CALIFORNIA AIR POLLUTION CONTROL DISTRICTS

January 1, 1960			
<i>Air pollution control district</i>	<i>Date formed</i>	<i>Population</i> ¹	<i>Percent of state population</i>
Bay Area -----	1956		
Alameda -----		886,661	
Contra Costa -----		402,961	
Marin -----		145,545	
San Francisco -----		715,069	
San Mateo -----		489,186	
Santa Clara -----		639,615	
Total Bay Area -----		3,229,037	20.8
Los Angeles County -----	1947	5,987,246	38.5
Orange County -----	1950	710,897	4.6
Riverside County -----	1955	302,462	1.9
Sacramento County -----	1959	498,908	3.2
San Bernardino County -----	1956	490,229	3.2
San Diego County -----	1955	1,008,522	6.5
Total—Active Control Districts -----		12,231,301	78.7
<i>Proposed air pollution control district</i> ²	<i>Date formed</i>	<i>Population</i>	<i>Percent of state population</i>
San Joaquin -----			
Fresno -----		361,875	
Kings -----		49,384	
Madera -----		40,212	
Merced -----		91,412	
San Joaquin -----		248,622	
Stanislaus -----		156,245	
Tulare -----		165,577	
Kern ³ -----		286,659	
Total -----		1,399,986	9.0

¹ State Department of Finance estimates.

² Creation of this district was authorized by the enactment of Senate Bill 644 in 1959 which added Chapter 26 to the Health and Safety Code. A proposal to activate the district was defeated by the voters in the affected counties in November 1960.

³ Figure for total population of Kern County used although that portion of the county outside the San Joaquin Valley watershed is excluded from district.

Measures to control industrial and domestic sources which have been in effect for over 10 years in Los Angeles County are now being instituted in other metropolitan areas of the State. The progress being made by smog control districts in controlling these stationary sources located within their own boundaries is promising.

Yet, as the 1959 report of this committee stated, "gains made in controlling pollution from industrial and domestic sources have largely been offset by increased contamination from motor vehicles."¹ Control of motor vehicle created air pollution could not, like the stationary

¹ California Legislature, Assembly Interim Committee on Public Health, Subcommittee on Air Pollution and Radiation Protection, "Air Pollution—Its Health Effects and Its Control," Volume 9, No. 17.

sources, be undertaken by the local districts. Mr. Harold Kennedy explained the need for state control over this source when he stated:

"Because vehicles are by definition mobile, local control is likely to be difficult and ineffectual. State governments have had considerable experience in regulating motor vehicles. State statutes now regulate automotive equipment, registration, taxation, and licensing. The records and procedures for adopting and enforcing regulation from motor vehicles are already in existence in state governments. It can be seen readily that the control of air contamination from motor vehicles falls naturally within the sphere of state responsibility. The State should and must step in to help local agencies in areas where they cannot help themselves. Furthermore, a logical distinction can be made between stationary sources of air pollution, which can best be controlled at the local level, and moving sources, such as pollutants from motor vehicles which can best be controlled at the level of the State."¹

Increasing knowledge of the significance of the motor vehicle in smog creation led to increasing pressures for the enactment of control legislation. Three different measures setting up procedures for an automobile exhaust control program were introduced at the 1959 Session of the California Legislature.² However, all measures were defeated in committee, and it was apparent that further study of the problem and means of solving it were needed.

¹ Kennedy, Harold W., "Levels of Responsibility for the Administration of Air Pollution Control Programs," paper presented to the National Conference on Air Pollution, Washington, D. C., Nov. 18-20, 1958.

² S. B. No. 1323, Richards, A. B. No. 2662, Rees, A. B. No. 2872, Rumford.

STANDARDS FOR AMBIENT AIR AND MOTOR VEHICLE EXHAUST EMISSIONS

The 1959 Legislature took a significant step when it enacted measures directing the State Department of Public Health to adopt standards for air quality and motor vehicle exhaust emissions before February 1, 1960. The need for the establishment of standards has long been recognized in California. While local governmental agencies have established important and needed measures to abate pollution, there have been no guidelines as to the quality of air a control program should strive to obtain. In recognition of this need, the Assembly Interim Committee on Public Health recommended in 1959 that,

"The Department of Public Health be directed to determine what constituted safe or acceptable air, and that they establish standards of safe air."

These standards were adopted by State Board of Health on February 1, 1960, and California thus became the first state to establish guidelines or standards which provide a sound basis for efforts to control or abate sources of atmospheric pollution.

Ambient air standards were designed, in accordance with legislative directive, to reflect the relationship between air pollution and health, including irritation to the senses, damage to vegetation, and interference with visibility.

They establish the following levels of air pollutants.³

- I. "Adverse" Level. The first effects of air pollutants are those likely to lead to untoward symptoms or discomfort. Though not known to be associated with the development of disease, even in sensitive groups, such effects are capable of disturbing the population stability of residential or work communities."
- The "adverse" level is one at which eye irritation occurs. Also in this category are levels of pollutants that lead to costly and undesirable effects other than those on humans. These include damage to vegetation, reduction in visibility, or property damage of sufficient magnitude to constitute a significant economic or social burden.
- II. "Serious" Level. Levels of pollutants, or possible combination of pollutants, likely to lead to insidious or chronic disease or to significant alteration or important physiological function in a sensitive group, define the "serious" level. Such an impairment of function implies a health risk for persons constituting such a sensitive group, but not necessarily for persons in good health.
- III. "Emergency" Level. Levels of pollutants, or combination of pollutants, and meteorological factors likely to lead to acute sickness or death for a sensitive group of people, define the "emergency" level.

Standards for ambient air quality have been set for sulfur dioxide at all three levels, for carbon monoxide at the "serious" level, for the photochemical pollutants, hydrocarbons, nitrogen dioxide, oxidant, ozone, and photochemical aerosols at the "adverse" level.

³ State Department of Public Health, "California Standards for Ambient Air and Motor Vehicle Exhaust," Berkeley California, 1960, p. 9.

Motor vehicle exhaust standards, based on or derived from the ambient air standards, were determined by calculating the needed reduction in the average concentration of certain substances in motor vehicle exhausts to achieve the desired community air quality as defined by the ambient air standards. Three basic factors were considered in setting the standards: the ambient air standards, the existing air quality in Los Angeles County and the expected total exhaust emissions from motor vehicles in 1970. These factors indicated that an 80 percent reduction in total hydrocarbons and a 60 percent reduction in carbon monoxide are required in order to materially improve California's air quality. The numerical standards established to achieve this goal were hydrocarbons, 275 parts per million by volume, and carbon monoxide, 15 percent by volume, for a simulated driving cycle.

Revision of the standards for both ambient air and motor vehicle emissions will be necessary as more data becomes available. An example of the need for such revision was provided by the recent finding that an organic nitrogen compound previously thought to act only as a catalyst in smog formation in fact causes eye irritation and also damages plants.¹ This finding, along with the knowledge that nitrogen oxides are one of the three basic elements creating photochemical air pollution, adds emphasis to the need for further study as to their inclusion in the state standards. It also illustrates the need for an ongoing research program which will permit identification of specific toxicants resulting from motor vehicle emissions and atmospheric reactions.

The Department of Public Health plans to review the standards with respect to possible changes, modifications or additions at regular intervals. It now plans to consider the adoption of additional ambient air standards in December, 1961. The department has indicated its hope that sufficient data will be available to recommend additional standards at that time for lead, at the "serious" level, ozone, at the "serious" level, fluoride, at the "adverse" level, hydrogen sulfide at the "adverse" level, ethylene, at the "adverse" level, and carbon monoxide, at the "emergency" level. The department has further said that standards for such other compounds as aldehydes and oxides of nitrogen will be considered as time and resources permit.

The standards for motor vehicle emissions will also require revision. Initially these standards were developed for contaminants discharged from the motor through the "tail pipe." They did not cover losses such as fuel tank and carburetor evaporation or crankcase vent emissions.

The department was directed by legislation introduced by this subcommittee and enacted by the 1960 Legislature (Assembly Bill 19) to set standards on all pollutants emitted from motor vehicles rather than limiting the standards to exhaust emissions.² It also directed the department to take damage to vegetation and impairment of visibility into consideration in setting these emission standards. It is important for both local and state air pollution control programs that the necessary research be undertaken to permit revision of and addition to standards at an early date.

¹ E. R. Stephens, E. F. Darley, O. C. Taylor, and W. E. Scott, "Photochemical Reaction Products in Air Pollution," Paper presented during the 26th midyear meeting of the American Petroleum Institute's Division of Refining, Detroit, Mich., May 11, 1960.

² A standard for crankcase emissions was established by the State Board of Public Health December, 1960.

THE MOTOR VEHICLE AS A MAJOR SOURCE OF AIR POLLUTION

It has been established beyond a doubt that motor vehicle emissions are a major contributor to photochemical smog in California. This conclusion has been supported by a growing mass of scientific evidence accumulated by research agencies throughout the nation. A variety of studies, including studies of the chemical composition of motor vehicle exhaust, photochemical studies which have reproduced smog effects by the artificial irradiation of exhaust products, studies correlating traffic movement and smog effects, all attest to this conclusion¹. In addition, this finding has been dramatically supported by the experiences of Los Angeles County where effective control over stationary sources of air pollution has not halted expansion of the air pollution problem.

Over 8 million motor vehicles are registered in the State of California today. 6,371,875 are classified as automobiles and 928,153 as trucks by the Department of Motor Vehicles. Some 921,000 are registered as commercial vehicles and, of this latter category, 97 percent are gasoline powered and close to 3 percent, or 24,000 are diesel powered (See Tables 2 and 3.)

THE DIESEL

This committee gave serious consideration to the problem of air pollution from the diesel-powered vehicle in California.

The diesel engine, unlike the gasoline engine, operates with an excess of air (between 20 and 100 parts of air to one part of fuel on a weight basis) while the gasoline engine operates with an excess of fuel (between 11 to 15 parts of air per part of fuel). The result is that very little fuel is exhausted unburned from the diesel engine. It therefore emits only limited amounts of hydrocarbons, amounts so small that they fall below the Department of Public Health standards defining maximum allowable hydrocarbon emissions from motor vehicles exhausts.

TABLE 2
Numbers of Automobiles and Trucks Registered in California—By County
December, 1959¹

County	<i>Autos</i>	<i>Percent</i>	<i>Trucks</i>	<i>Percent</i>	<i>Total</i>	<i>Percent of state total</i>
Alameda	361,027	5.7	41,700	4.5	403,327	5.5
Alpine	169	--	52	--	221	--
Amador	3,070	0.1	1,307	0.1	5,257	0.1
Butte	35,390	0.6	9,677	1.0	45,067	0.6
Calaveras	4,370	0.1	1,515	0.2	5,885	0.1
Colusa	5,786	0.1	2,671	0.3	8,457	0.1
Contra Costa	158,579	2.5	17,508	1.9	176,087	2.4
Del Norte	6,454	0.1	2,289	0.2	8,723	0.1
El Dorado	10,803	0.2	3,834	0.4	14,637	0.2
Fresno	145,097	2.3	32,506	3.5	177,603	2.4
Glenn	6,432	0.1	3,033	0.3	9,465	0.1
Humboldt	39,711	0.6	12,321	1.3	52,032	0.7

¹ SOURCE: Compiled from California Department of Motor Vehicles Data, December 1959.

² Faith, W. L., Benzetti, N. A., Rogers, L. H. Automobile Exhaust and Smog Formation, Air Pollution Foundation, San Marino, California, October 1957. Report No. 21, page 7, et seq.

<i>County</i>	<i>Autos</i>	<i>Percent</i>	<i>Trucks</i>	<i>Percent</i>	<i>Total</i>	<i>Percent of state total</i>
Imperial -----	23,090	0.4	8,118	0.9	31,814	0.4
Inyo -----	5,058	0.1	1,853	0.2	6,911	0.1
Kern -----	113,843	1.8	25,307	2.7	139,150	1.9
Kings -----	18,363	0.3	5,058	0.6	24,021	0.3
Lake -----	6,335	0.1	2,105	0.2	8,440	0.1
Lassen -----	5,757	0.1	2,059	0.2	7,816	0.1
Los Angeles -----	2,643,765	41.5	280,241	30.8	2,930,006	40.4
Madera -----	14,983	0.2	4,524	0.5	19,507	0.3
Marin -----	57,026	0.9	6,060	0.7	63,122	0.9
Mariposa -----	2,323	0.1	681	---	3,004	---
Mendocino -----	18,666	0.3	6,710	0.7	25,376	0.3
Merced -----	31,679	0.5	8,794	0.9	40,473	0.6
Modoc -----	3,147	0.1	1,063	0.2	4,810	0.1
Mono -----	875	---	343	---	1,218	---
Monterey -----	67,609	1.1	11,048	1.2	78,657	1.0
Napa -----	23,902	0.4	4,376	0.5	28,338	0.4
Nevada -----	8,843	0.1	2,566	0.3	11,399	0.2
Orange -----	268,516	4.2	28,605	3.1	297,121	4.1
Placer -----	22,268	0.3	5,626	0.6	27,894	0.4
Plumas -----	4,892	0.1	1,534	0.2	6,726	0.1
Riverside -----	119,214	1.9	20,744	2.2	139,958	1.9
Sacramento -----	197,138	3.1	28,594	3.1	223,732	3.1
San Benito -----	6,599	0.1	2,379	0.3	8,978	0.1
San Bernardino -----	193,443	3.0	29,164	3.1	222,607	3.0
San Diego -----	377,712	5.9	45,928	4.9	421,640	5.8
San Francisco -----	261,082	4.1	46,355	4.9	306,437	4.2
San Joaquin -----	95,788	1.5	22,531	2.4	118,319	1.6
San Luis Obispo -----	32,005	0.5	6,973	0.8	38,978	0.5
San Mateo -----	181,111	2.8	19,826	2.1	200,937	2.8
Santa Barbara -----	64,404	1.0	10,501	1.2	75,205	1.0
Santa Clara -----	248,180	3.9	32,375	3.5	280,555	3.8
Santa Cruz -----	37,240	0.6	7,236	0.8	44,476	0.6
Shasta -----	23,549	0.4	7,808	0.9	31,447	0.4
Sierra -----	953	---	351	---	1,304	---
Siskiyou -----	13,460	0.2	5,043	0.6	19,403	0.3
Solano -----	49,732	0.8	6,857	0.7	56,589	0.8
Sonoma -----	61,018	1.0	14,571	1.6	75,589	1.0
Stanislaus -----	65,942	1.0	15,350	1.7	81,292	1.1
Sutter -----	12,831	0.2	4,548	0.5	17,379	0.2
Tehama -----	9,967	0.2	3,483	0.4	13,450	0.2
Trinity -----	3,740	0.1	1,504	0.2	5,244	0.1
Tulare -----	62,930	1.0	17,165	1.8	80,095	1.1
Tuolumne -----	6,367	0.1	2,128	0.2	8,495	0.1
Ventura -----	70,784	1.1	12,413	1.3	83,197	1.1
Yolo -----	25,321	0.4	7,569	0.8	32,890	0.5
Yuba -----	12,060	0.2	3,510	0.4	15,570	0.2
Out-of-State -----	23,271	0.4	10,367	1.1	33,638	0.5
Totals -----	6,471,875	100.5	928,153	99.7	7,300,028	100.0

TABLE 3
Commercial Vehicles by Motive Power

	December 31, 1959					
	<i>Bulane</i>	<i>Elec-</i>	<i>Pro-</i>	<i>Diesel</i>	<i>Gas</i>	<i>Total</i>
		<i>tric</i>	<i>pane</i>			
Regular commercials -----	304	7	129	4,866	829,008	834,314
B E Commercials -----	272	—	30	18,805	68,172	87,295
Totals -----	576	7	159	23,671	897,150	921,573
Percent -----	*	*	*	2.6	97.3	100

* Less than 1 percent

SOURCE Compiled from California Vehicle Registration Figures of the Department of Motor Vehicles for Period January 1-December 31, 1959

Similarly, while the gasoline engine exhaust contains from 1 percent to 8 percent of carbon monoxide (in excess of the state 15 percent standard) the diesel engine exhaust runs about 0.1 percent carbon monoxide, again less than the maximum set by the Department of Public Health standard for carbon monoxide emissions.

The diesel is believed to emit oxides of nitrogen which do contribute to communitywide air pollution. The amount and significance of this pollutant to the problem, however, is not yet known. Since nitrogen oxides are an important ingredient of smog, it is necessary to determine the amount contributed by the diesel so that the State may set control standards if warranted.

Although the present limited information suggests that the diesel engine does not adversely affect communitywide air quality, it does constitute an undesirable local nuisance. Under certain conditions of operation, both smoke and irritants are produced which have a pungent odor and eye irritating characteristic.

The specific identity of the irritants from the diesel has not been determined but they are believed to include aldehydes. Since aldehydes are a part of the organic atmospheric contaminants and since these compounds participate in the total communitywide air pollution problem it is necessary to determine to what degree they participate in the photochemical smog reaction. Because research has been extremely limited in this area this committee recommends that additional study be given to determine the identity of these irritants, to determine what, if any, their effect is on ambient air quality, their participation in photochemical smog, and to determine the effects of specific irritants on the public health and well being.

The presence of the smoky exhausts in most cases is the result of overfueling the diesel engine or improperly maintaining the injectors and is within control of the diesel operator. Provision for the control of such emissions is now found in the Vehicle Code as follows:

Section 27153 No motor vehicle shall be operated in a manner resulting in the escape of excessive smoke, flame, gas, oil, or fuel residue.

A stepped-up program of enforcement of this section has been undertaken by the California Highway Patrol. The committee commends the patrol for undertaking this program and urges that it continue its efforts to maintain strict enforcement of this provision.

The Los Angeles Air Pollution Control District also is operating a control program and district officials give traffic citations to both the driver and the truck owner when a truck is found to be emitting smoke exceeding a certain standard of grayness as measured by the US Bureau of Mines Ringleman Chart.

Since the black smoke and fumes from the diesel are a recognized local nuisance, this committee urges that every possible effort be made to effect their control. It may well be that greater consideration should be given to such localized problems as this one created by the diesel, as distinguished from the communitywide air pollution problem which is

being considered now by the Department of Public Health through the establishment and continual improvement of the statewide ambient air quality standards

Detailed information on diesel traffic (commercial vehicles) is not available. While close to 24,000 diesel commercial vehicles are registered in California, this is not indicative of total amount of diesel traffic within the State. One report has estimated, for example, with regard to total commercial interstate travel, that "of the mileage driven in California, 44.6 percent is by trucks or tractors with California Registration."¹ Conversely, 55.4 percent would be mileage driven by out-of-state trucks. Another estimate made by the California Trucking Association is that 20 percent of the mileage driven by California-registered diesel commercial vehicles is within California, that there are approximately 40,000 diesels registered outside the State and that some 20 percent of their mileage is within California. In other words, vehicles registered in California represent about one-third of the total diesel traffic in California.

Since the diesel may play a significant part in the California air pollution, it is important and this committee recommends that the Department of Motor Vehicles develop more information on the extent and geographic distribution of diesel traffic in the State.

THE GASOLINE POWERED MOTOR VEHICLE

The motor vehicle with its internal combustion engine constitutes a major source of photochemical air pollution. When gasoline is burned completely in this engine, the combustion products are essentially carbon dioxide and water vapor. The motor vehicle on the road today, however, is designed to operate with a rich fuel-air ratio to provide the motorist with a smooth and easy-starting as well as a powerful and responsive automobile. The effect of operating the motor with such a ratio is that quantities of the fuel are discharged unburned through the exhaust system, thus creating the hydrocarbons that constitute a significant factor in the creation of photochemical smog.

The combustion process in the spark-ignited internal combustion engine produces a number of exhaust constituents important in the creation of air pollution. They are made up of a gamut of organic compounds including hydrocarbons in varying proportions, together with other partially oxidized and completely unburned fuel components. In addition, auto exhaust contains a variety of nitrogen oxides including nitric oxide, which oxidizes in air to form nitrogen dioxide. These components are necessary for the production of the reactants which cause the manifestations of photochemical smog. A number of factors, including the condition of the motor vehicle and its operating condition affect exhaust composition so that it is only possible to estimate the amount of the various constituents within certain ranges. These are indicated in Table 4.

¹ California Division of Highways, a Special Report Pertaining to Interstate Trucking in California, 1964, p. 6.

TABLE 4
COMPOSITION OF AUTOMOBILE EXHAUST

Constituent	Percent of concentration (volume/volume)	
	Minimum	Maximum
Aldehydes	0	0.03
Carbon dioxide	5	15
Carbon monoxide	0.2	12
Hydrocarbons	0.01	2
Hydrogen	0	4
Lead Compounds	¹	¹
Nitrogen	78	85
Oxides of nitrogen	0	0.4
Oxygen	0	4
Sulfur dioxide	²	²
Water vapor	5	15

¹ Depends on lead additives

² Depends on sulfur content of fuel

SOURCE John R. Goldsmith and Lewis H. Rogers, "Health Hazards of Automobile Exhaust," "Public Health Reports," Vol. 74, No. 6, June 1959, page 553

The Department of Public Health has established standards for hydrocarbons and carbon monoxide because of the present knowledge of their significance. The reduction of hydrocarbons is essential for controlling or limiting the creation of photochemical smog. The hydrocarbons themselves constitute a large class of substances of varying reactivity. This group includes many compounds such as paraffins, olefins, aromatics, cyclo-paraffins and others. It is generally believed that the olefins or unsaturated hydrocarbons are primarily responsible for the smog reaction, although the participation of saturated hydrocarbons and other organic compounds cannot be ignored.

Carbon monoxide, although it does not contribute to the photochemical complex, is known to be toxic when exceeding certain levels. The concentration of carbon monoxide resulting from the operation of motor vehicles has reached dangerous levels in Los Angeles County on several occasions and need for its control is evident.

Standards have been established for industrial exposure to nitrogen dioxide and lead in addition to carbon monoxide, but neither ambient air nor motor vehicle exhaust standards for these contaminants can be established by the Department of Public Health until more data has been gathered.

SOURCES OF EMISSIONS FROM MOTOR VEHICLES

Three different categories of contaminant emissions are important to the air pollution problem

1. Exhaust Losses

Contaminant losses derived from the vehicle exhaust system are by all odds the largest and most important. It has been estimated that they constitute about three quarters of the total motor vehicle emissions.

2. Blowby Losses

Blowby losses result from the venting of vapors and fumes from the crankcase of the vehicle. Preliminary research work was performed by the General Motors Corporation, the Los Angeles County Air Pollution Control District, the Air Pollution Foundation and the U.S. Public Health Service to determine the importance of this source in relation to total vehicular hydrocarbon loss. The amount of blowby contami-

nants is still open to question but best estimates at present are that it constitutes from 10 to 25 percent of total vehicle hydrocarbon loss.

3. Evaporation Losses

Evaporation of gasoline from gas tanks and carburetor vents also represent a problem which is deserving of control

Control over crankcase blowby emissions can be achieved through the installation of a simple device which returns the blowby emission back into the engine for further burning or back into the exhaust system for discharge through the normal exhaust system of the motor vehicle

The Automobile Manufacturers Association announced on November 30, 1959, that because of the effectiveness of a blowby device in controlling these particular emissions, the device will be offered on all new cars produced in the United States for sale in California not later than the time of introduction of the 1961 models

Solution of the motor vehicle pollution problem depends on control of all three of these loss categories Since tailpipe exhaust constitutes the major problem, principal attention must be given to its control.

SIGNIFICANCE OF THE MOTOR VEHICLE

Varying estimates of the total tonnage of hydrocarbons emitted by the exhaust of automobiles and gasoline-powered trucks have been made The most reliable appears to be that used by the Department of Public Health in calculating exhaust emission standards, namely, that exhaust from motor vehicles contains hydrocarbons equivalent to about 5 percent of the fuel used This calculation results in approximately the same tonnage estimates that have been made for Los Angeles County by the Air Pollution Control District

Motor vehicle emissions are of course the greatest in the most populous counties The effects of these emissions may, however, be significant in adjacent counties because of geography and wind patterns which allow the photochemical reaction to occur at varying distances from the initial source The relative importance of the motor vehicle varies in accordance with the extent and nature of other pollutants being released into the atmosphere, geographic and wind patterns and on the effectiveness of local governmental activities directed toward the control of stationary emission sources

In *Los Angeles County* the motor vehicle is the single most important uncontrolled pollution source Of the 2,150 tons of hydrocarbons released each day, 1,450 tons or 67.5 percent comes from Los Angeles County's 3,000,000 motor vehicles Similar estimates made for oxides of nitrogen reveal that 440 tons or 61 percent of the county's daily emissions of this substance are traceable to gasoline-powered vehicles, while 8,900 tons of carbon monoxide or 91 percent of the total emanate from this source The Los Angeles Air Pollution Control District has estimated that the motor vehicle contributes 98 percent of the olefins or unsaturated hydrocarbons most of which immediately react to create photochemical air pollution¹ (See Table 5)

¹ These figures are the best possible commensurate with the accuracy of the measurements and the methods employed Quantitative levels specified in this report will change as new evidence is acquired, as new methods of measurement are developed and as the pattern of community life changes

TABLE 5
CONTAMINANT EMISSIONS IN LOS ANGELES COUNTY

(Tons per Day)—January 1, 1960

Source	Organic gases		Total	Inorganic gases			Other	Aerosols
	Olefins	Other hydrocarbon and organic gases		NO _x	SO _x	CO		
Motor vehicles -----	525	925	1,450	440	35	8,900	4	35
Petroleum								
Refining			100	10	40	700	4	5
Marketing	20	230	90	0	0	0	0	0
Production			60	u	n	u	0	0
Solvent Usage -----	0	430	430	0	0	0	0	0
Combustion of fuels -----	0	20	20	270	245	2	0	32
Other -----	0			3	49	184	1	24
Totals -----	545	1,605	2,150	723	369	9,786	9	96

u—unknown

n—negligible

SOURCE Los Angeles Air Pollution Control District

The relative importance of the motor vehicle is due to the stringency of the other controls that have been enforced by the Los Angeles district. According to Smith Griswold, Los Angeles District Air Pollution Control Officer, "by rigid application of controls to industry, and particularly to the petroleum refining complex, more than 3,000 tons of pollution are being kept out of the atmosphere every day. Since 1948, local industrial establishments have spent more than \$88,000,000 to equip their plants with control devices. Industrial operations, from the smelting of metal to the painting of manufactured goods, all have been brought within the scope of the air pollution program and have been controlled to the limit of engineering ability. We know that you cannot control the problem of photochemical smog . . . until the emissions of motor vehicles have been dealt with effectively."

The Los Angeles District has provided for the control of hydrocarbons, particulate matter, visible smoke, sulfur oxides, nuisance-causing substances, combustion contaminants and dust and fumes from all stationary sources located within the county. What remains to be controlled now is the mobile source, the motor vehicle.

In the *San Francisco Bay area*, the importance of the motor vehicle as a contributor to smog will become more apparent as the effects of the Bay area's other air pollution control measures become effective. A major milestone in the control of air pollution in the Bay area was reached on May 4, 1960, when the Bay Area Air Pollution Control District Board of Directors unanimously adopted their second regulation. Regulation No. 2 is a detailed measure designed to reduce air pollution from a number of sources, including incineration, salvage, heat transfer, and general combustion operations. The restrictions on emissions to the atmosphere become effective on January 1, 1961.

The difficulty of defining the precise role of motor vehicle exhaust in the Bay area's air pollution control problem was pointed out by the District Control Officer, Benjamin Linsky, when he said, "there are many ways of computing the various components of motor vehicle exhausts and their various contributions to areawide air pollution problems. It is possible to arrive at different figures ranging from a low of 30 percent to a high of 80 percent of the area's air pollution being ascribed to motor vehicle exhaust gases, dusts, droplets. Similarly, the improvements expected from the control of hydrocarbons and carbon monoxide can be computed in many different ways." He added that "motor vehicle exhaust constitutes a large tooth in the buzz saw that bites us on both a localized and an areawide basis. With the total growth of activities of all kinds in the Bay area, it is evident that the tightest possible controls on stationary and automotive sources are and will continue to be required in the foreseeable future."¹

In other areas of the State a precise estimate of the magnitude of the air pollution problem attributable to the motor vehicle cannot be made. To do that there must be more precise and extensive air monitoring than is the case now, as well as information as to the nature and extent of other air pollution sources. Hopefully, the State and the counties will undertake the development of this much needed monitoring.

There is no question, however, that the motor vehicle is a smog creator. It is a principal contributor of the pollutants causing photo-

¹ Benjamin Linsky, Control Officer, Bay Area Air Pollution Control District, letter to committee, October 1960.

chemical smog and the effects of this type smog, as shown previously, are being detected in wider areas of the State each year. As the car population increases the amount of pollution will increase unless and until stringent control measures are instituted. The estimated increase of our car population from today's 8 million to 18 million in only 20 years emphasizes the need for rapid establishment of a control program.¹

METHODS OF CONTROLLING MOTOR VEHICLE EXHAUST EMISSIONS

A variety of means of controlling motor vehicle exhaust emissions have been studied and discussed during the last several years. Although several proposed methods of control have been found ineffective, it is known now that the development and production of adequate and effective devices is well within the technical competence of the manufacturing industry. Various means of control are mentioned below.

1. *Maintenance*

Proper maintenance of the motor vehicle can undoubtedly accomplish some reduction in hydrocarbon emissions. However, even if there were ways of insuring that the motorist would keep his automobile properly in tune and maintained at all times, the total reduction of emissions by this means would be entirely inadequate for solving the problem.

2. *Fuel Composition*

The relation of gasoline composition to the smog-forming potential of motor vehicle exhaust is the subject of much controversy. Some authorities have felt that reduction of the olefinic content of gasoline, since olefins are extremely reactive hydrocarbons, would reduce the smog creating potential of the fuel. It was for this reason that the Los Angeles Air Pollution Control Board enacted Rule 63 in June 1959 to limit the olefin content of gasoline sold in Los Angeles.

Some gasoline passes through the engine without being burned or changed in any way. Other fuel is emitted into the atmosphere through gas tank or carburetor evaporation. Still more losses occur at filling stations and gasoline distribution centers. A change in the fuel composition will, of course, change the nature of these emissions.

However, it is known now that the normal combustion of the gasoline engine creates large quantities of olefins, even from nonolefinic fuels. The effect of fuel composition must be viewed, therefore, as affecting only the small percentage of unburned fuels in the presence of a much larger quantity of olefins manufactured in the engine itself as a result of combustion.

Present evidence indicates that controlled fuel composition itself is not the answer to the smog control problem. The advisory committee to this subcommittee stated in this regard:

"There is no indication from past or current work that the contribution to smog by motor vehicle exhaust can be limited or even reduced to an acceptable point by a change in gasoline composition."

3. *Control Devices*

Numerous devices have been proposed to effect a reduction in the hydrocarbons present in tailpipe exhaust emissions. Early attempts

¹ Estimate of the Department of Motor Vehicles, June 1959.

to effect control were through the development of induction devices to shut off fuel supply during the deceleration cycle of engine operation. These devices, discussed in the 1959 report of this committee, have not been found capable of giving a worthwhile reduction in emissions.

Three different types of devices are currently being developed. Information on the status of each of these types, prepared for this committee by its advisory committee, follows:

1 *Low-temperature Converter* The typical low-temperature converter effects a 60 percent to 80 percent reduction in hydrocarbons when operating at full efficiency. It does not reduce carbon monoxide. It is also subject to producing an objectionable odor.

2 *High-temperature Converter* The high-temperature converter effects up to a 90 percent reduction in hydrocarbons when operating at full efficiency. It also accomplishes a satisfactory reduction in carbon monoxide. It also produces some odor.

3 *Direct-flame Afterburner* Two modifications of this device suitable for installation on passenger cars have been developed. One replaces the conventional muffler, and the other is cast or fitted into the exhaust manifold. Some test work has been done on these devices and they both accomplish better than a 90 percent reduction in hydrocarbon emissions. They also effect a satisfactory reduction in carbon monoxide.

There has also been some commercial application of flame afterburners designed for gasoline-powered trucks and buses of 500 to 750 cubic inch displacement. This device was quite effective on the deceleration cycle, less so on the other cycles. We understand that the device is not currently being used.

The following general comments regarding the above three devices are pertinent. Both the low- and high-temperature converters require some warmup time. Since they are not effective during this period, this must be taken into consideration in arriving at their overall efficiency. The state standard requires an 80 percent reduction in average hydrocarbon emissions. For example, if an automobile is driven for 20 minutes and a warmup period of four minutes is required, then the efficiency of the device must be 100 percent to accomplish an overall 80 percent reduction during the complete driving period. Warmup time can be reduced by some means, one of which is the use of a small amount of catalyst. However, since catalyst life is a problem, a certain minimum amount of catalyst is required to last a reasonable length of time. Those conversant with the problem recognize the inspection and control problems attendant to a device that will not last a reasonable length of time. It has been suggested that this should be one year, and this to be tied in with the yearly issuance of license plates.

The testing of these catalytic-type converters is time consuming since one of the most important points is catalyst life. There are apparently a number of converters on which much test work has been done. Dr. W. L. Faith has stated that there are as many as 40 such devices under test.

The direct-flame afterburner presents much less of a problem as far as testing is concerned. Only its efficiency need be measured for, if

properly constructed, it should last the life of the vehicle. The modification that is an integral part of the exhaust manifold has the added advantage of requiring no modification of the present muffler system thus possibly making its installation on present cars more feasible.

Although, as previously stated, acceptance tests for the direct-flame afterburner present less of a problem than for the catalytic type, neither should be accepted by the State as satisfactory for required installation by the public without thorough road testing on a substantial number of vehicles. Only in this way can the public be assured of satisfactory performance at a reasonable cost.

The Advisory Committee felt that, with the above reservations, of the devices or methods available at this time, satisfactory control of vehicle exhaust emissions can only be accomplished by the direct-flame afterburner or the catalytic-type muffler.

Although the state standards for exhaust do not include oxides of nitrogen, it should be borne in mind that these may eventually have to be controlled. If so, present work indicates that this can be done with the proper type catalyst. There is also some promise that a catalytic converter may be developed that will reduce hydrocarbons, carbon monoxide, and oxides of nitrogen to an acceptable level.

The Automobile Manufacturers Association has reported that "there are now three technically feasible methods of exhaust gas treatment capable of reducing hydrocarbon emissions by various amounts up to more than 90 percent of the total under varying test conditions, and that some means are available also for control of emissions of nitrogen oxides and carbon monoxide."

"There are," the Automobile Manufacturers Association went on to say, "complications which will require additional study, testing, and development before any of the methods can be made practicable and dependable enough for commercial application. Among problems yet to be solved in various units are warmup time, excessive heat, back pressure, odor, noise, size, introduction of secondary air and catalyst attrition."

4 Modified Engine Design

The ultimate solution to the problem plaguing California is, of course, the development of an engine which will not emit pollutants, one which will burn fuel completely and in so doing make more efficient use of the fuel and effect a needed economy for the motorist.

Ford Motor Company and others are now "working on projects to combine the port-throttle economy of the diesel with the smoothness and easy starting ability of the spark ignition engine."² This approach is one which certainly needs to be pursued. Victor G. Raviolo, Executive Director of Ford Motor Company's Engineering Staff, stated in an address before the Pittsburg Section of Society of Automotive Engineers in April, 1960, that he believes an engine of this type might be ready for production by 1965. Because of the urgency of solving the present air pollution problem, however, it is not feasible to delay a control program until such time as engine design has progressed to the stage where it alone can control these emissions.

¹Automobile Manufacturers Association, Motor Vehicle Industry Efforts to Reduce Air Pollution From Exhaust, Papers delivered at Annual Meeting, Society of Automotive Engineers, Detroit, Michigan, January 18, 1959.

²Gulf Oil Corporation, *The Orange Disc*, "A Look Under the Hood, 1970," May-June 1960, p. 28.

THE STATE PROGRAM FOR CONTROLLING MOTOR VEHICLE CREATED AIR POLLUTION

California became the first state to establish a program to control motor vehicle pollutant emissions when A B 17 was passed by the 1960 Legislature.¹ The legislation provides for a 13-member Motor Vehicle Pollution Control Board, a system of adopting criteria for and approving control devices, and a program for the installation of devices on California motor vehicles. The measure directs the board to consider all motor vehicle emissions, not solely those from the exhaust system.

The measure sets forth the state policy and board responsibility when it states "that the emission of pollutants from motor vehicles is a major contributor to air pollution in many portions of the State, that the control and elimination of such pollutants is of prime importance for the protection and preservation of the public health and well-being, and for the prevention of irritation to the senses, interference with visibility, and damage to vegetation and property; that, as the Department of Public Health has established standards for air quality and for emissions of contaminants from motor vehicles, the state has a responsibility to establish uniform procedures for compliance with these standards."

Important provisions of the legislation are summarized below.

- 1 Membership of the Board. The board is to be appointed by the Governor and is directly responsible to him. Nine of the members will be selected to represent the interests of various affected groups throughout the state including agriculture, labor, organizations of motor vehicle users, the motor vehicle industry, science, air pollution control officers, and the general public. The other four members will be the directors or their representatives of the Departments of Public Health, Agriculture, and Motor Vehicles and the California Highway Patrol.
- 2 Powers and duties of the board—
 - a Adopt, in accordance with the provisions of the Administrative Procedure Act, rules and regulations necessary to carry out the provisions of the program.
 - b Employ needed personnel.
 - c Determine the criteria for approval of motor vehicle exhaust control devices, taking into consideration such factors as cost of the device and its installation, its durability, ease and facility of determining whether the device when installed is properly functioning, and other factors which may render the device suitable or unsuitable for the control of motor vehicle air pollution or for the health, safety, and welfare of the public.

¹ See Appendix I

- d Issue certificates of approval for devices which meet the motor vehicle exhaust standards of the Board of Health and those other criteria adopted by the board.
 - e Designate classifications of motor vehicles exempt from compliance.
 - f Report to the Governor and Legislature at each regular session the board's recommendations for legislation and other action necessary to implement and enforce the program
- 3 Applicability The Motor Vehicle Pollution Control Program will be operative throughout the entire state with regard to new motor vehicles once the board has certified devices as acceptable for the control of motor vehicle created pollution. The applicability of the law with regard to used vehicles will be dependent upon the local county or district determination of the significance of its own air pollution problem. Provision is made for a county or district to exempt itself. The legislation states that a county board of supervisors or the governing board of an air pollution control district may hold a public hearing to determine, based on the Department of Public Health air quality standards, the existence and extent of its air pollution problem and the part played in that problem by the motor vehicle. It further states that the governing board may, " . . . on the basis of its finding as to air quality . . . determine and adopt a resolution declaring that the provisions (relating to used vehicles) are unnecessary for the preservation of air quality . . . " and that therefore the motor vehicle control program is not necessary within that county or district.

The counties which exempt themselves from the program are required to hold a public hearing to re-assess their air pollution problem every two years in order to determine whether or not to come under the control program.

- 4 Compliance ¹ Certified control devices must be installed on all new vehicles in the State one year after the certification date. Their installation is required on other motor vehicles in those counties and districts operating under the program in accordance with the following schedule:
 - a Used motor vehicles upon transfer of ownership—one year after the certification date
 - b Used commercial vehicles—by the second December 31 following the certification date.
 - c All other vehicles—by the third December 31 following the certification date
- 5 Testing of Devices by the Motor Vehicle Pollution Control Board. The board is authorized to contract with qualified laboratories, public or private, within or outside the State, for the testing of devices to determine whether or not they meet the motor vehicle emission standards. All testing of devices by the board for purposes of certification must be performed pursuant to such contracts.

¹ The legislation establishes the certification date as the date when the board has issued certificates of approval for two or more devices.

6 Method of Enforcement

- a Registration of motor vehicles on which devices are required will be denied by the Department of Motor Vehicles until a device has been installed
- b No person will be permitted to drive a motor vehicle registered in violation of the act or which is not equipped with a device as required by the act
- c Fraudulent registration of a motor vehicle is a misdemeanor
- d. No person may represent a device as certified if in fact it is not

7 Financing the Program \$500,000 was appropriated for support of the board program

The need for a program to control this particular source of air pollution has been clearly established. The method of achieving this control as outlined in the legislation was determined only after intensive study of the problem by this committee and its advisory committee working closely with other agencies and organizations which had long studied alternative methods of control. It was only with the assistance of these groups, including the Los Angeles County Air Pollution Control District, the Bay Area Air Pollution Control District, and the County Supervisors Association that passage of this legislation was possible.

Legislation establishing a control program such as this has never before been enacted. The legislation and its implementation will be watched with a great deal of interest not only in this State, but throughout the country. The program will have a profound effect on the individual motorists in California and on the automobile and accessory manufacturers. The benefits of the program will be evidenced by a total community-wide reduction in air pollution rather than by the individual car owners who will have to install the devices.

This cannot be viewed as the final legislation on motor vehicle emission control. As the Motor Vehicle Pollution Control Board proceeds with its task of implementing the legislation it may be found that changes in the law will be needed. The Legislature has a continuing responsibility to review the program as it develops to insure that it is carried out in accordance with the legislative intent, namely (1) that the board establish a program to insure the control of pollutants at the earliest possible date, and (2) that the board in so doing recognize its responsibility by considering the economic impact of the program on the motoring public and by considering any and all other factors which may affect the health, safety and welfare of the public.

It will also be necessary to re-evaluate the adequacy of the provisions made for laboratory facilities and enforcement. The legislation directs the Motor Vehicle Pollution Control Board to contract with private or public laboratories to test control devices. It is recommended that review be given to determine whether or not the contract laboratory facilities available for testing are adequate to insure the needed protection to the public or whether the State should, as this committee and its advisory committee initially recommended, establish its own laboratory facilities.

Serious consideration was given to the need for an inspection system to insure that devices as required were installed on motor vehicles and that they were properly operating. The committee and its advisory committee felt that enforcement of the program could be achieved without an inspection system which would impose a heavy financial burden on the State. While it was recognized that additional legislation may be required to work out the many details involved with tying enforcement with the state motor vehicle registration program, the committee recognized that such details could not be determined until more was known about the types of devices which will be developed and accepted for installation on motor vehicles. The Motor Vehicle Pollution Control Board was directed to report back to the Legislature on the need for implementing legislation in large part for solving this problem. The board was also directed to take into consideration in approving devices the factor of the ease and facility of determining whether devices once installed were functioning properly. It is this committee's firm conviction that the motoring public should not be required to support a costly inspection program and further that the people in this State, recognizing the vital importance of air pollution control, will comply with the requirements to curtail the emission of pollutants from their own vehicles.

The success of the motor vehicle control program is dependent on the co-operation and assistance of other state departments, particularly the Departments of Public Health and Motor Vehicles. The Department of Public Health is responsible for setting accurate and reliable standards for exhaust control on which the board must base its program. It is also responsible for providing necessary monitoring assistance to local control agencies and counties to permit a continuing assessment of the quality of California air and to provide a basis for an evaluation of the motor vehicle air pollution control program. The present departmental program in both these areas needs to be expanded to provide essentially needed support for the program and this committee recommends that the Legislature approve the necessary budget augmentation during the 1961 Regular Session.

The Department of Motor Vehicles is responsible for registration of all motor vehicles within the State. The legislation stipulates that enforcement of the motor vehicle pollution control program is principally to be achieved through the department's registration program. Procedures for establishing an effective system to insure that only those vehicles which meet the requirements are permitted to register will have to be developed by the department and the board. The board will also need the assistance of the department in the development of more refined and detailed data on the characteristics of the motor vehicle population, including information on geographic distribution of vehicles by type and age, and on driving patterns; this information will be necessary for commercial and diesel-powered vehicles as well as for the privately-owned gasoline-powered automobiles.

Widespread participation of the local counties and air pollution control districts with regard to used vehicles is of importance in insuring the success of the state program. The legislation which provides that the program shall be statewide with regard to new motor vehicles also provides that local governments can decide that they wish to

withdraw from the program with regard to used vehicles if the air quality in the area does not fall below the air quality as stipulated by the Department of Public Health ambient air standards. The counties and districts are given wide discretion in determining what course they wish to take. This committee wishes to emphasize that it feels the counties should consider in making their determinations that (1) photochemical air pollution is being evidenced in ever-widening areas of California each year and that this is a forerunner of an even more serious problem in these areas, and that (2) not only is the source of pollution, the motor vehicle, a mobile source, but the effects of the pollution itself move in accordance with geography and wind movements across county boundaries, so that the action taken by one county is very likely to affect the air pollution problem of adjacent counties.

The success of the program will also be dependent on the co-operation of industry which must develop, manufacture and distribute devices at an early date. It is further dependent on the co-operation of the public whose motor vehicles will have to be equipped with the devices. It is vitally important that the public recognize the need for this control program, that air is no longer a resource which can be taken for granted and neglected, and that the benefits of control, though they will not be immediately apparent, will far outweigh the costs and inconvenience of control.

Again it should be emphasized that this program is aimed at one significant source or aspect of the air pollution problem. While the emissions from motor vehicles are a major source of air pollution in California, the control of one or more contaminants produced by the motor vehicle cannot be viewed as the complete solution to the problem. The Governor's Commission on Metropolitan Area Problems in discussing this said, "Ultimately more far-reaching measures may be necessary as the concentrations of people and cars in our metropolitan areas increase. For example, some members believe it may well become necessary to encourage or even require use of motor vehicles not powered by internal combustion engines; automobiles powered by other fuels or by batteries or fuel cells may have to become a reality. Discouragement of expanded use of private automobiles by limiting freeway expansion and favoring rail rapid transit may also, through a developing emergency, become unavoidable."

The commission also pointed out that "Air pollution is closely related to and cannot be divorced from consideration of other problems including increasing population density, metropolitan spread, transportation methods, freeway location, industrial site zoning and regional planning."¹

This committee wishes to emphasize again the need for increased and strengthened control throughout the State over local stationary sources of air pollution by the local counties and air pollution control districts. The preservation of California's air resource can be achieved only with effective local control in conjunction with an effective state program of control over motor vehicle created air pollution.

¹ Governor's Commission on Metropolitan Area Problems, Special Report to Governor Brown, January, 1960.

APPENDICES

APPENDIX I

COMMITTEE LEGISLATION Assembly Bill No. 17

CHAPTER 23

An act to add Chapter 3 (commencing at Section 24378) to Division 20 of the Health and Safety Code, to amend Sections 4000 and 4750 of, and to add Sections 27156 and 40001 to, the Vehicle Code, relating to the control of motor vehicle air pollution, and making an appropriation therefor

[Approved by Governor April 14, 1960. Filed with
Secretary of State April 14, 1960.]

The people of the State of California do enact as follows:

SECTION 1 Chapter 3 (commencing at Section 24378) is added to Division 20 of the Health and Safety Code, to read

CHAPTER 3 MOTOR VEHICLE POLLUTION CONTROL

Article 1. Application

24378 The Legislature finds and declares

(a) That the emission of pollutants from motor vehicles is a major contributor to air pollution in many portions of the State.

(b) That the control and elimination of such pollutants is of prime importance for the protection and preservation of the public health and well-being, and for the prevention of irritation to the senses, interference with visibility, and damage to vegetation and property

(c) That, as the Department of Public Health has established standards for air quality and for emissions of contaminants from motor vehicles pursuant to Sections 426.1 and 426.5, the State has a responsibility to establish uniform procedures for compliance with these standards

24379 (a) As used in this chapter the following terms shall be construed as defined in the Vehicle Code

- (1) Commercial vehicle
- (2) Implement of husbandry
- (3) Motor vehicle
- (4) Motor-driven cycle
- (5) Used vehicle
- (6) Passenger vehicle

(b) As used in this chapter, "motor vehicle pollution control device" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle.

(c) As used in this chapter, "certified device" means a motor vehicle pollution control device for which a certificate of approval has been issued by the Motor Vehicle Pollution Control Board

Article 2 Motor Vehicle Pollution Control Board

24383 There is in the State Department of Public Health a Motor Vehicle Pollution Control Board. The board shall be responsible di-

rectly to the Governor. Administrative services for the board shall be provided by the State Department of Public Health. The board shall consist of 13 members, nine of whom shall be appointed by the Governor with the consent of the Senate, and four shall be the following officers of the State, or their nominees: Director of Public Health, Director of Agriculture, Commissioner of the California Highway Patrol, and Director of Motor Vehicles.

24384 (a) Of the nine members originally appointed by the Governor, three shall be appointed to serve until July 1, 1962, three shall be appointed to serve until July 1, 1963, and three shall be appointed to serve until July 1, 1964. Thereafter, all members shall be appointed for a term of four years. All members shall hold office until the appointment of their successors. Any vacancies shall be immediately filled by the Governor for the unexpired portion of the terms in which they occur.

(b) Members of the Motor Vehicle Pollution Control Board shall serve without compensation, but each member shall be reimbursed for his necessary traveling and other expenses incurred in the performance of his official duties.

(c) The members of the board appointed by the Governor shall be selected in such a fashion that the interests of various affected groups throughout the State, including agriculture, labor, organizations of motor vehicle users, the motor vehicle industry, science, air pollution control officials and the general public are represented to the fullest extent possible.

24385 The Motor Vehicle Pollution Control Board shall select annually from its membership a chairman and vicechairman. Only those members who have been appointed by the Governor shall be eligible for these offices.

24386 The Motor Vehicle Pollution Control Board shall have the powers and authority necessary to carry out the duties imposed on it by this chapter, including, but not limited to, the following:

(1) To adopt rules and regulations in accordance with the provisions of the Administrative Procedure Act (commencing at Section 11370 of the Government Code), necessary for proper execution of the powers and duties granted to, and imposed upon the board by this chapter.

(2) To employ such technical and other personnel as may be necessary for the performance of its powers and duties.

(3) To determine and publish the criteria for approval of motor vehicle pollution control devices. In determining the criteria the board shall take into consideration the cost of the device and its installation, its durability, the ease and facility of determining whether the device, when installed on a motor vehicle, is properly functioning, and any other factors which, in the opinion of the board, render such a device suitable or unsuitable for the control of motor vehicle air pollution or for the health, safety, and welfare of the public.

(4) To issue certificates of approval for any motor vehicle pollution control device where, after being tested by the board or tested and recommended by a laboratory designated by the board as an authorized vehicle pollution control testing laboratory, the board finds that the device operates within the standards set by the state department under

Section 426.5 and meets the criteria adopted under subdivision (3) of this section.

(5) To exempt from Article 3 of this chapter designated classifications of motor vehicles for which certified devices are not available, and motor vehicles whose emissions are found by appropriate tests to meet state standards without additional equipment, and motor-driven cycles, implements of husbandry, and vehicles which qualify for special license plates under Section 5004 of the Vehicle Code

24386 5 The Motor Vehicle Pollution Control Board shall submit a report to the Governor and the Legislature not later than 10 calendar days following the commencement of each general session of the Legislature covering the board's recommendations concerning such legislation and other action as is necessary for the implementation and enforcement of this chapter. The board shall submit its first report to the Governor and the Legislature at the 1961 General Session

24387 The Motor Vehicle Pollution Control Board shall adopt regulations specifying the manner in which a motor vehicle pollution control device shall be submitted for testing and certification

24388. Whenever the Motor Vehicle Pollution Control Board issues certificates of approval for two or more devices for motor vehicles, it shall so notify the Department of Motor Vehicles

Article 3 Compliance

24389 (a) As used in this article "the certification date" means the date on which the Motor Vehicle Pollution Control Board notifies the Department of Motor Vehicles that it has issued certificates of approval for two or more devices

(b) As used in this article "principal vehicle location" means (1) for passenger vehicles owned by a person (as distinguished from a firm, copartnership, association, or corporation), the county in which the owner resides, (2) for commercial vehicles, and passenger vehicles registered in the name of a firm, copartnership, association, or corporation (as distinguished from a person), that county or counties in which the vehicle will be operated during the greatest portion of time during the period for which registered. If the vehicle referred to in subdivision (2) of subsection (b) operates the greatest portion of time in more than one county in which the provisions of Sections 24391, 24392 and 24393 are operative, the principal vehicle location shall be designated as one of the counties in which the provisions of Sections 24391, 24392 and 24393 are operative

(c) Where only a portion of a county is located within an air pollution control district of the class described in subdivision (b) of Section 24394 and where Sections 24391, 24392 and 24393 are operative in only one portion of the county, the principal vehicle location shall be determined with respect to the portion of the county in which the owner resides or in which the vehicle is operated, respectively

24390 No new motor vehicle shall be registered in this State after one year after the certification date unless and until the motor vehicle is equipped with a certified device

24391 No used motor vehicle upon transfer of registered owner shall be registered after one year after the certification date when the principal vehicle location for the motor vehicle is a county, or a portion

of a county, wherein the provisions of this section are operative, unless and until the motor vehicle is equipped with a certified device

24392 No used commercial motor vehicle shall be registered after the second December 31 next following the certification date when the principal vehicle location is a county, or a portion of a county, wherein the provisions of this section are operative, unless and until the motor vehicle is equipped with a certified device

24393 No motor vehicle shall be registered after the third December 31 next following the certification date when the principal vehicle location is a county, or portion of a county, wherein the provisions of this section are operative, unless and until the motor vehicle is equipped with a certified device

24394 (a) In any county which is not, in whole or in part, included within the boundaries of an air pollution control district created by special law to include the area of two or more counties, the board of supervisors may determine, in the manner provided in this section, that the provisions of Sections 24391, 24392 and 24393 are unnecessary for the accomplishment of the purposes of this chapter and that those sections shall not be operative within that county

The board of supervisors may hold a hearing to determine the existence and extent of motor vehicle created air pollution in the county. In determining the existence and extent of air pollution, the air quality standards established by the State Department of Public Health shall be used. The board of supervisors may, at the completion of the public hearing, and on the basis of its finding as to air quality in the county, determine and adopt a resolution declaring that the provisions of Sections 24391, 24392 and 24393 are unnecessary for the preservation of air quality and that those sections shall not be operative within the county. A copy of each such resolution shall be filed with the Motor Vehicle Pollution Control Board and the Department of Motor Vehicles.

(b) In each county which is included within the boundaries of an air pollution control district created by special law to include the area of two or more counties the governing body of the district may, by following the procedures set forth in subdivision (a) of this section, on a districtwide basis, (rather than the board of supervisors of each county included within the district) determine that the provisions of Sections 24391, 24392 and 24393 shall not be operative within the district.

(c) Where only a portion of a county is located within an air pollution control district of the class described in subdivision (b) of this section, the board of supervisors of that county may, by following the procedures set forth in subdivision (a) of this section determine that the provisions of Sections 24391, 24392 and 24393 shall not be operative within that portion of the county not included in the air pollution control district.

(d) Thereafter the board of supervisors, or governing body, of each such county (or portion thereof) or district in which the provisions of Sections 24391, 24392 and 24393 are not operative, shall hold such a public hearing at least every two years and may adopt a resolution declaring that the provisions of Sections 24391, 24392 and 24393 are necessary for the preservation of air quality and that those sections shall be operative within the county (or portion thereof) or district,

respectively Thereupon the provisions of Sections 24391, 24392 and 24393 shall be operative in the county (or portion thereof) or district. A copy of each such resolution shall be filed with the Motor Vehicle Pollution Control Board and the Department of Motor Vehicles

24394.3 The board of supervisors or the governing body of the district, respectively, shall give notice of the time and place of each such public hearing by publication twice in a newspaper of general circulation in each county affected not less than 15 days before, and not more than 45 days before such hearing

24395 No person shall sell, display, advertise, or represent as a certified device any device which, in fact, is not a certified device. After the certification date, no person shall install or sell for installation upon any motor vehicle any motor vehicle pollution control device which has not been certified by the Motor Vehicle Pollution Control Board

24396 Any violation of this article is a misdemeanor.

Article 4 Authorized Motor Vehicle Pollution Control Testing Laboratories

24397 The Motor Vehicle Pollution Control Board may designate such laboratories as it finds are qualified and equipped to analyze and determine, on the basis of the standards established by the board, devices which are so designed and equipped to meet the standards set by the state department under Section 426 5 and the criteria established by the Motor Vehicle Pollution Control Board

24398 The Motor Vehicle Pollution Control Board may contract for the use of, or the performance of the tests or other services by, a laboratory or laboratories operated by any public or private agency, within or without the State All testing of devices by the board for purposes of certification shall be performed pursuant to such contracts.

SEC 2 Section 4000 of the Vehicle Code is amended to read.

4000 No person shall drive, move, or leave standing any motor vehicle, trailer, semitrailer, pole or pipe dolly, or auxiliary dolly upon a highway unless it is registered and the appropriate fees have been paid under this code

No person shall drive, move, or leave standing any motor vehicle upon a highway which has been registered in violation of Chapter 3 (commencing at Section 24378) of Division 20 of the Health and Safety Code

SEC. 3. Section 4750 of said code is amended to read:

4750. The department shall refuse registration or renewal or transfer of registration upon any of the following grounds:

- (a) That the application contains any false or fraudulent statement.
- (b) That the required fee has not been paid.

(c) That the registration or renewal or transfer of registration is prohibited by the requirements of Chapter 3 (commencing at Section 24378) of Division 20 of the Health and Safety Code.

SEC. 3.5. Section 27156 is added to said code, to read:

27156. No motor vehicle which is required to be equipped with a certified motor vehicle pollution control device as a condition to registration under Chapter 3 (commencing at Section 24378) of Division 20 of the Health and Safety Code shall be operated upon any highway

unless the motor vehicle is equipped with a certified motor vehicle pollution control device which is correctly installed and properly maintained so as to be in operation whenever the vehicle is operated. No such device shall be modified or altered in a manner which will decrease its efficiency or effectiveness in the control of air pollution.

SEC. 4. Section 40004 is added to said code, to read:

40004. It is unlawful and constitutes a misdemeanor for any person knowingly to make any false or fraudulent statement on an application for registration or renewal or transfer of registration of a motor vehicle.

SEC. 5. The sum of five hundred thousand dollars (\$500,000) is appropriated from the General Fund in augmentation of Item 195, Budget Act of 1960, for support of the State Department of Health in carrying out the provisions of Chapter 3 (commencing at Section 24378), Division 20 of the Health and Safety Code.

SEC. 6. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

APPENDIX II

LAWS RELATING TO THE ENACTMENT OF STANDARDS FOR AMBIENT
AIR QUALITY AND MOTOR VEHICLE EXHAUST

The 1959 Legislature by the passage of Assembly Bill 1368 and Senate Bill 117 added the following to the Health and Safety Code (see Chapters 200 and 1949, Chaptered Laws of 1959) The italicized sections in Section 426.5 were added by the 1960 Legislature with the passage of Assembly Bill 19 (see Chapter 36, Chaptered Laws of 1960)

426.1. The State Department of Public Health shall, before February 1, 1960, develop and publish standards for the quality of the air of this State. The standards shall be so developed as to reflect the relationship between the intensity and composition of air pollution and the health, illness, including irritation to the senses, and death of human beings, as well as damage to vegetation and interference with visibility.

The standards shall be developed after the department has held public hearings and afforded an opportunity for all interested persons to appear and file statements or be heard. The department shall publish such notice of the hearings as it determines to be reasonably necessary.

The department, after notice and hearing, may revise the standards, and shall publish the revised standards, from time to time.

426.5. It shall be the duty of the State Director of Public Health to determine by February 1, 1960, the maximum allowable standards of emissions of exhaust contaminants from motor vehicles which are compatible with the preservation of the public health including the prevention of irritation to the senses, *interference with visibility and damage to vegetation*.

The standards shall be developed after the department has held public hearings and afforded an opportunity for all interested persons to appear and file statements or be heard. The department shall publish such notice of the hearings as it determines to be reasonably necessary.

The department after notice and hearing may revise the standards, and shall publish the revised standards, from time to time. *In revising the standards, the department shall, after February 1, 1960, take into account all emissions from motor vehicles rather than exhaust emissions only*

APPENDIX III
REPORT OF ADVISORY COMMITTEE ON MOTOR VEHICLE
EXHAUST CONTROL

December 17, 1959

Introduction

This advisory committee was appointed by Assemblyman R. B. Cameron, Chairman of the Subcommittee on Air Pollution of the Assembly Interim Committee on Public Health, to assist it in studying the problem of air pollution as related to motor vehicle exhaust emissions. The advisory committee was requested to provide information on which the Subcommittee on Air Pollution could draft legislation on the control of motor vehicle exhausts.

Recognizing that motor vehicles are a moving source of air pollution which must be controlled at the state level of government, the State Legislature in 1959 requested the State Department of Public Health to adopt standards for exhaust emissions from motor vehicles.

The State Board of Public Health, on December 4, 1959, adopted standards on emissions from motor vehicle exhausts. One standard to be applied statewide was set at 275 ppm for hydrocarbons and 15 percent for carbon monoxide.

In order for the standards to be effective, it is necessary that further legislation be enacted. This legislation would be the basis for controlling exhaust emissions from motor vehicles.

The advisory committee submits the following recommendations in answer to questions posed by Chairman Cameron at the October 27, 1959, meeting.

Findings and Recommendations

Motor vehicle exhaust control should be applied in all counties of California, unless and until the board of supervisors, after a public hearing, finds there is no motor vehicle exhaust pollution problem in that county. As a guide in determining the existence of an air pollution problem, the ambient air quality standards of the California State Board of Public Health should be used.

This control can be accomplished initially through the registration procedure of the Department of Motor Vehicles by requiring evidence of the installation of an approved device at the time of registration. Continued compliance with this requirement shall be accomplished by the California Highway Patrol and local enforcement agencies.

The testing of devices to determine compliance with established state standards shall be done in a laboratory under the control and supervision of the California Highway Patrol.

Periodic inspection will be required at privately owned stations, licensed and supervised by the California Highway Patrol to insure continued satisfactory operation of devices installed on motor vehicles.

It is recommended that a commission on the control of pollution from motor vehicles be established in the state government, with powers and duties as stated in the attached outline.

The schedule for installation of state *certified* control devices on motor vehicles shall be as follows:

All new motor vehicles and all used motor vehicles upon transfer of registered owner	One year from commission certification of an "acceptable" device or devices under established "State Standards."
Used commercial motor vehicles	Second licensing period following certification of an "acceptable" device or devices, <i>i.e.</i> , 13-23 months, depending on date of device certification
All remaining motor vehicles	Third licensing period following certification of an "acceptable" device or devices, <i>i.e.</i> , 25-35 months, depending on date of device certification

Generally, all motor vehicles, as defined in the Motor Vehicle Code and registered in the State of California, shall be subject to control, unless exempt either in the proposed statute or by the commission

It is suggested that statutory exemption be made for motor cycles, motor scooters, implements of husbandry, and "antique" motor vehicles.

The commission will have to exempt certain types of motor vehicles that presently meet the exhaust code without a device. An example is the diesel-powered vehicle. The commission will have to take action on diesel emissions if the State Department of Public Health decides to include additional emissions other than hydrocarbons and carbon monoxide.

Since it will be the State's responsibility to test devices and issue certification of approval, laboratory and test facilities must be made available to the California Highway Patrol who will be responsible for this function. Initially, it is proposed that the State accept the Los Angeles Air Pollution Control District's offer to enter into a contract for the operation of its existing facilities. Since these facilities may have to be expanded and other test facilities be made available at other locations in the State to adequately handle the test program, these facilities should be under the complete control of the California Highway Patrol.

Manufacturers of devices submitted to the State for testing shall bear the costs of the testing and evaluation of such devices, irrespective of the approval of such devices.

The owners of the motor vehicles shall pay for any inspection required to determine the proper functioning of the device installed on their vehicles. Such inspection may be required when the vehicle is relicensed or reregistered, or at such time as may be required under the rules and regulations of the commission.

The costs of the program incurred by the Department of Motor Vehicles, the California Highway Patrol, and the commission, or by any other state agencies that may be members of the commission, shall be borne by the State.

Community-wide air pollution occurs in the larger metropolitan areas of the State affecting over 75 percent of its citizens and causing serious damage to agriculture. Prompt legislative action is required to control motor vehicle exhaust emissions as part of an effective control

program urgently needed to protect the public health and well being and to prevent property damage

At a meeting of the Advisory Committee on January 18, 1960, the following changes in the original report were adopted.¹

1 Total contaminant emissions from the motor vehicle should be considered rather than exhaust emissions alone since it is known that contaminant losses from the motor vehicle include, in addition to tail-pipe exhaust, emissions from the carburetor, fuel tank and crank case. By open wording of a policy draft at this time, it will be possible later to specify details as information and control measures develop.

2 Placement of the Motor Vehicle Pollution Control Laboratory. The original recommendation was that a laboratory be established within a state agency and the California Highway Patrol was suggested as that agency. Discussion brought out that

- a Although the California Highway Patrol has responsibility for testing certain devices for automobiles and trucks now, the testing was done by the University of California and its research facilities at the Richmond Field Station under contract with the Patrol,
- b The California Highway Patrol is essentially an enforcement agency and is not now staffed or oriented in the field of research testing and development for vehicular equipment,
- c The Department of Public Health did have an engineering staff and were already concerned with contaminants from vehicles,
- d The Department of Public Health in developing its standards for vehicular emissions must have a laboratory facility to effect promulgation of standards,
- e Although the devices will be attachments to vehicles, their addition to the vehicle is not done to enhance the safety and improve operation but instead is required as needed to protect the public health and welfare and prevent damage to property. The consensus of the committee was that the Department of Public Health was an appropriate agency for housing the Motor Vehicle Pollution Control laboratory.

OUTLINE FOR COMMISSION ON CONTROL OF POLLUTION FROM MOTOR VEHICLES

It is proposed there be established in the state government a Commission on Control of Pollution From Motor Vehicles, the membership of which should consist of 15 members, 11 of which should be appointed by the Governor and four to be the following officers of the State or their nominees: Director of Public Health, Director of the Department of Motor Vehicles, Director of Agriculture, and the Commissioner of the California Highway Patrol.

¹ Minutes of January 18, 1960 meeting of Advisory Committee, Sacramento, California

Term of Office

The term of office of the 11 members originally appointed by the Governor to the said state commission should be staggered as follows:

- Three members to serve for a period of two years,
- Four members to be appointed for a term of three years,
- Four members to be appointed for a term of four years.

All terms are to commence on the effective date of the act. Thereafter, all members shall be appointed for a term of four years. Any vacancies are to be immediately filled by the Governor for the unexpired portion of the terms in which they occur.

Reimbursement for Expenses

Each member of the commission shall be entitled to receive his actual and necessary travel expenses while on official business of the commission.

Chairman and Secretary

The chairman and secretary of the said state commission shall be selected annually from the appointees-at-large.

Powers and Duties

The commission shall have the following powers and duties:

1. Establish an office.
2. Appoint and fix the salary of an executive officer. Said executive officer shall be exempt from the state civil service and shall serve at the pleasure of the commission.
3. Adopt rules and regulations necessary for the proper administration of such duties as the Legislature may prescribe for said commission.
4. Determine and publish the criteria for approval of devices and the testing procedure whereby devices are evaluated.
5. Issue certificates of approval for acceptable devices.
6. Certify exemptions from devices for those used vehicles for which no acceptable device is available.
7. Certify those motor vehicles whose emissions without a device meet state standards. This performance will be determined by testing an adequate representation of that category.
8. Maintain co-ordination between the Department of Public Health on standards for air quality and motor vehicle exhaust emissions and the Department of Motor Vehicles and Highway Patrol on implementation of this program.
9. Exercise any other powers pertaining to policy that are necessary to accomplish the intent of this act.

o

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ASSEMBLY INTERIM COMMITTEE ON PUBLIC HEALTH

W. BYRON RUMFORD, *Chairman*

SUBCOMMITTEE ON RADIATION PROTECTION

RADIATION PROTECTION IN CALIFORNIA

MEMBERS OF SUBCOMMITTEE

W BYRON RUMFORD, *Chairman*

RONALD BROOKS CAMERON

DON MULFORD

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Sacramento, January, 1961

Published by the

**ASSEMBLY
OF THE STATE OF CALIFORNIA**

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Speaker

HON CARLOS BEE
Speaker pro Tempore

HON WILLIAM A MUNNELL
Majority Floor Leader

HON JOSEPH C SHELL
Minority Floor Leader

ARTHUR A OHNIMUS
Chief Clerk

COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
SACRAMENTO, December 21, 1960

HON RALPH M BROWN
*Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber, Sacramento*

GENTLEMEN The Assembly Interim Committee on Public Health submits the Report on Radiation Protection in California prepared by the Subcommittee on Radiation Protection in accordance with House Resolution No 326, of the 1959 Session

This report is the result of testimony given at three public hearings and reviews the progress of the radiological control program in California as established by the 1959 Legislature. It also discusses transfer of jurisdiction over additional nuclear materials, as well as the feasibility of a state program for fallout protection.

Respectfully submitted,

W BYRON RUMFORD, *Chairman
Assembly Interim Committee
on Public Health, and Sub-
committee on Radiation Pro-
tection*

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INTRODUCTION AND SCOPE

The subject of ionizing radiation, its uses, its hazards and its effects, and thus of the consequent responsibility of the State has been a subject of continuing interest to the California Legislature. Extensive study by the Assembly Interim Committee on Public Health during the 1957-59 interim produced two comprehensive reports on the subject of atomic energy and radiation protection.

- 1 *Atomic Energy Development and Radiation Protection in California*, Volume 9, Number 14, February, 1959

This report discussed the nature of radiation, its applications in industry, agriculture, medicine and research, described the health hazards associated with exposure to ionizing radiation, reviewed the existing responsibility and activities of federal and state agencies in California, and proposed legislation (A B 1403) which resulted in creating in the Office of the Governor the position of Co-ordinator of Atomic Energy Development and Radiation Protection.

- 2 *Development and Control of Nuclear Industry in California*, Volume 9, Number 15, February, 1959. Prepared for the Committee by the Bureau of Public Administration, University of California, Berkeley.

This report presented background information vital for an understanding of the nature and uses of nuclear energy and radiation, outlined legislative approaches adopted by other states and federal agencies to cope with the problems posed by this new industry, and discussed various criteria for state legislation and regulation.

With this background the committee continued its study during the 1959-61 interim, confining its investigations to the general area of adequate radiation protection for California citizens. Authority for the interim study was derived from several sources. Besides the general authority granted to the committee by the provisions of H R 326, it was specifically directed to study radiation health hazards by H R 403. The Assembly Rules Committee, in addition, assigned to the committee for interim study A B 1833, relating to production and utilization of atomic energy, and A B 172 relating to the California State Disaster Council.

Specifically, the committee study was confined to the following three subjects, its findings in which constitute the body of this report.

I California's Radiation Protection Program	<i>Public Hearings Held</i> October 6 and 7, 1960 Sacramento, California
II The Relationship of the Federal Government and the State in Controlling Sources of Ionizing Radiation	August 18 and 19, 1960 Los Angeles, California
III State Responsibility for Nuclear Fallout Shelters	November 15 and 16, 1960 Los Angeles, California

FINDINGS

PARTS I AND II—RADIOLOGICAL CONTROL IN CALIFORNIA

1. The extensive and rapidly increasing applications of radiation and atomic energy in California require statewide control of radiation sources in order to protect the people of California from the harmful effects of ionizing radiation

2. While a number of state agencies are concerned with radiation problems and a few have undertaken limited radiation programs, there is no statewide comprehensive program of radiation control. Radiation controls which do exist are largely "ad hoc" measures which had been adopted to meet specific needs

3. At present, regulatory authority is exercised principally by the Division of Industrial Safety, Department of Industrial Relations, and by the Department of Public Health. The former agency is primarily concerned with occupational hazards arising from industrial and commercial uses of radiation sources, while the latter is primarily concerned with the total environmental effects of all radiation sources. This concern of the Department of Public Health is reflected by the following current radiological programs:

a. Environmental Surveillance Program

A special allocation of funds by the 1959 Legislature has enabled the department to increase this program substantially. Twelve strategically located monitoring stations now take regular samples of air, rain, dry fallout, soil, and vegetation. In addition, water, snow, food, and sewage are sampled regularly throughout the State to determine possible radioactive contamination

b. Radiation Source Registration

Pursuant to the direction of the 1959 Legislature (AB 1403), the department undertook to register all sources of radiation throughout the State. The department reports over 12,000 registrations of radiation sources, most of which are not under the jurisdiction of the Atomic Energy Commission. Dentists accounted for 40 per cent of the registrations, medical doctors, 30 per cent, professionals in other fields of medical care, 25 per cent, and 5 per cent from governmental, educational, and industrial facilities. The registration program, however, offers little evidence relating to the safety of radiation machines operated by the registrants.

4. Public Law 86-373 authorizes the Atomic Energy Commission to enter into agreement with a state for transfer to that state of jurisdiction, now exercised by the Atomic Energy Commission, over source and byproduct materials, and limited amounts of special nuclear materials. The largest of these categories is that of byproduct materials which includes all radioisotopes produced in nuclear reactors. Radio-

isotopes produced in another manner, e.g., in particle accelerators, are not subject to federal regulation and thus would be an object of state concern in any case

5 All of California's radiological efforts, whether involving the federal government, state departments and agencies, or local jurisdictions, are co-ordinated through the office of the State Coordinator of Atomic Energy Development and Radiation Protection. The present program of that office has received unanimous approval and commendation from all involved in it.

6. The State Fire Marshal, presently charged with the responsibility of providing regulations for the transport of radioactive materials, questions the delegation of this authority since problems of radioactivity are not those of fire safety but of public health.

Recommendations

- 1 The State of California should take immediate steps to develop a comprehensive program of radiation control. Such steps should include:
 - a. A requirement that all radiation sources be certified in safe operating condition in addition to the present requirement that such sources register with the Department of Public Health.
 - b. Legislative authorization for the Governor to enter into negotiations with the Atomic Energy Commission for the transfer to the State of California of jurisdiction over byproduct, source, and certain special nuclear materials which is now exercised by the commission, reserving to the Legislature the right to approve or disapprove the results of such negotiation.

PART III—NUCLEAR FALLOUT SHELTERS

1. Given the assumption that a nuclear attack on the United States is at least a definite possibility, fallout protection is necessary to shield most of the survivors of such an attack from lethal doses of radiation.

2 Although the Office of Civil and Defense Mobilization has allocated \$250,000 for construction of prototype shelters in Sacramento, San Diego, and Los Angeles Counties, the National Shelter Policy is one of education and encouragement. There is no national plan for mandatory shelter construction.

3 The State of California has followed the permissive approach of the National Shelter Policy. Shelter construction in California, therefore, has been done on an individual basis without recourse to any statewide plan.

4 Low-cost, long-term financing for family type shelter construction is not available. Publicly financed community shelters have been proposed as one way to reduce the per capita cost of shelter construction. An additional obstacle to individual shelter construction is the fact that existing building codes did not envision this type of structure and thus are wholly inapplicable.

5. The fallout shelter program has been defined as primarily a non-military defense measure.

Recommendations

1. The Division of Housing, Department of Industrial Relations should establish minimum building code requirements applicable to the construction of fallout shelters
- 2 In view of the vital need for fallout protection as a nonmilitary defense measure, the California Legislature should petition the Congress of the United States to develop with all deliberate speed a master plan for the nonmilitary defense of the United States.
- 3 In the absence of a federal master plan for nonmilitary defense, the State of California should take major steps to inaugurate a program of fallout protection, including shelters.

PART I

**CALIFORNIA'S PROGRAM FOR RADIATION
PROTECTION AND CONTROL**

DEPARTMENT OF PUBLIC HEALTH

A comprehensive description of all state agencies and departments having jurisdiction over radiological materials and sources is contained in the 1959 report to the Legislature from this committee. Following is a progress report on the department's activities concerned with registration of radiation sources and with environmental surveillance.

Registration of Radiation Sources

Frank M. Stead, Chief of the Division of Environmental Sanitation, testified at the committee hearing that a considerable amount of preliminary planning and staff recruitment were necessary before this program established by the 1959 Legislature (Health and Safety Code, Section 25780) ¹ could get under way. Views of professional and industrial groups that are major radiation users were solicited, drafts of proposed regulations and forms were distributed, informal public hearings were held, further revisions followed, and on May 30, 1960, rules and regulations finally adopted by the State Board of Public Health became effective.

Mr. Stead outlined the program ² as follows:

1. *Registration*

The regulations required that every person possessing a reportable source of radiation file a registration by July 31, 1960. Thereafter, anyone acquiring a radiation source must register within 30 days of the date of acquisition. Reregistration is required in January 1961, and every two years thereafter. Certain types of change, such as change of address, loss or theft of radioactive material, or major changes in installations must be reported.

2. *Local Health Agency Participation*

During the initial planning stages it came to our attention that several local jurisdictions in the State were planning for local registration of radiation sources. We were able to develop agreements whereby these jurisdictions accepted the state registration and thus forestall requirements for duplicate registration. Provision was made in the radiation registration regulations for a local health agency, upon request, to participate in the state registration program to the extent of distribution and receipt of state forms. The original registration form is transmitted to the

¹ Assembly Bill 1493, 1959 Session, California Legislature.

² Testimony, Hearing before Subcommittee on Radiation Protection, Assembly Interim Committee on Public Health, Sacramento, October 6 and 7, 1960, pp. 31-34.

State Department of Public Health and a copy retained by the local agency. Eleven local health agencies are participating in this way.

For those local health agencies not wishing to participate to this extent, provisions have been made to provide them with copies of completed registration forms. Fifteen additional health agencies have elected to be kept informed in this manner.

3 *Receipt of Completed Registration Forms*

A total of 12,208 registrations were received by the end of September. Although the legal deadline has passed, approximately 100 forms a week are still being received. It is estimated that about 70 per cent of persons who should register have in fact done so. Upon receipt, each form is assigned a registration number and the registrant appropriately notified.

4 *Preliminary Results*

Although complete tabulations will not be available for several months, some *tentative estimates* based on sampling of the forms received are possible:

- (a) More than 40 per cent of the registrants are dentists, 30 per cent are M.D.'s. About 95 per cent of all registrants are from the medical or allied professions, about 5 per cent are from government, education, and industry.
- (b) The 12,000 registrants possess an estimated 17,675 X-ray and fluoroscope units.
- (c) An analysis of a sample of registrants reporting nonmedical sources of radiation showed that 75 per cent of the *non-medical* registrants possess radioactive materials, 50 per cent possess radiation machines, and 25 per cent possess both radioactive materials *and* radiation machines. More than one-third of the nonmedical installations dispose of some radioactive wastes (sewer, burial, commercial service, etc.).
- (d) Based on other data (Atomic Energy Commission licenses issued), we estimate there are some 300 medical installations which possess licensed radioisotopes. Not included in this figure are those using only unlicensed radium.

On a quantitative basis registration returns graphically demonstrate that radiation sources not now controlled by the Atomic Energy Commission represent by far the largest segment of California's total radiation problem.

The department's radiation program as it is now conducted has some major deficiencies. From the viewpoint of health hazard its most important limitation is that it is solely a registration program. Thus the program provides a list of radiation sources, especially radiation machines, but provides no guarantee that such sources are in safe operating condition.

Mr. Stead, in answer to the question posed by Chairman Rumford relative to registration of a machine which was not adequate in itself, stated:

"Registration is an information gathering procedure, not a procedure of regulation."

Registration does provide for some measure of safety in that it induces applicants to evaluate the protective equipment available, but such precautions are usually aimed only at operator safety. In addition most applicants are not technically qualified themselves to assess the overall safety of their equipment. It is entirely possible that a duly registered radiation machine in regular use in a doctor's office could expose a stenographer in an adjoining office to harmful accumulations of radiation. Both the machine operator and the stenographer would be oblivious of the fact of such exposure.

Testimony presented at the hearing³ indicated that the City of Los Angeles by local ordinance has adopted enforceable regulations for a fee-supported regulatory inspection system of X-ray installations and other radiation sources. The question of inspection by the Department of Public Health on a statewide fee-supported basis is a matter for determination by the Legislature. The Department of Public Health feels that until more information is gathered, further steps in the direction of regulation should not be pursued.⁴

A suggested solution endorsed by representatives of labor, dentistry, local health officers, and others at the hearing was a certification requirement for all radiation machines. Under such a plan every radiation source would have to be inspected and certified safe upon its installation and periodically thereafter. The certifying agency would be an accredited, commercial firm of technical competence to perform such inspection. This procedure is closely analogous to that already existing in other areas in which the fire services, for example, accept certification of materials and equipment by national testing agencies or laboratories. Certification can accomplish its goal of overall safety without demanding additional field services from state agencies, and still leave room for a considerable measure of local control, if local jurisdictions determine that some special requirements are necessary. From the standpoint of uniformity, criteria for inspection would have to be established by the Department of Public Health in conjunction with their registration program.

Environmental Surveillance Program

In its 1959 report⁵ the Assembly Interim Committee on Public Health concluded that the environmental monitoring program of the Department of Public Health was, at best, minimal. In addition to a lack of comprehensive sampling the program was hampered by lack of routine observation of major watersheds and principal waste disposal systems. The department was granted for fiscal 1959-60, funds for a program of substantially increased activities in radiological health, and by October 1960 had expanded its environmental surveillance program. Objectives of the program as indicated in the proposal requesting funds included:

- 1 To detect, measure, record, and evaluate the total radiation exposure to the population of this State

³ *Ibid.* p. 52

⁴ *Ibid.* p. 53

⁵ "Atomic Energy Development and Radiation Protection in California," Report of the Assembly Interim Committee on Public Health, Subcommittee on Air Pollution and Radiation Protection, February 1959.

2. To enable official agencies to take necessary action to protect the population during periods of increased intensity of radiation incident to industrial accidents, radioactive fallout, etc.
3. To provide advice and consultation to agencies, communities, and individuals, concerning radiological health problems
4. To furnish to official agencies basic information for the development of long-range programs to minimize radiation exposure of the population
5. Continually to provide the public with factual information and authoritative interpretation of data concerning radiological health.

Due to problems of staff recruitment, procurement of necessary equipment, and establishment of a radiological laboratory, the program ran several months behind schedule. Substantial progress has been made toward a comprehensive surveillance of air, rain, ambient radiation, snow, surface waters, domestic water supplies, waste disposal and agricultural foodstuffs.

Frank M. Stead, Chief of the Division of Environmental Sanitation, outlined their broad scale program.⁶

Environmental Surveillance

1. Fixed Stations—Twelve monitoring stations have been established. Five of these are along the coast from Eureka to San Diego, five down the Central Valley from Redding to El Centro, and one in the Central Sierras. All major population centers are covered, and good geographical distribution is obtained. At these stations the following media are routinely sampled: air, rain, dry fallout, soil and vegetation. Most of the stations are operated by local health agency personnel.
2. Snow—With the co-operation of the Department of Water Resources, snow samples are collected monthly from 10 locations throughout the snow season.
3. Domestic Water—Twenty-one domestic water supplies are being sampled routinely. Ultimately all major surface water supplies will be sampled on a regular basis along with selected well supplies.
4. Sewage—Currently sewage sludge and effluent samples are collected at 16 locations. This will be expanded to about 25. Coverage will be obtained for all major population centers and for certain other localities where special activities could produce significant radioactive wastes to the sewer systems.
5. Food—The following foods are, or will be, sampled with the co-operation of the Departments of Agriculture and Fish and Game:
 - (a) Milk from eight large milkshed areas, monthly
 - (b) Eighty samples per year of 30 different food crops.
 - (c) Eggs from six major production areas, twice yearly

⁶ Frank M. Stead, Chief, Division of Environmental Sanitation, State Department of Public Health. Testimony before Assembly Subcommittee on Radiation Protection, Assembly Interim Committee on Public Health, October 6-7, 1960, pp. 36-38.

- (d) Fourteen grams and animal feeds, yearly
- (e) It is planned to sample extensively meat, poultry, shellfish, fish, and processed food. This is not yet in operation.

In addition to this broad program of environmental surveillance the department has undertaken special surveillance of nuclear reactor sites and other major atomic installations. The program involves comprehensive sampling of environmental media in the vicinity of these installations in an effort to check on variations in radiation levels. Ideally the department would measure the amount of radioactivity at a site location before construction and use this figure as a basis for comparison of later radiation levels. The ultimate success of such a program will depend to a great extent upon the voluntary co-operation of operators of major atomic installations. At present they are requested to initiate an environmental surveillance program on their own and to furnish the State with copies of their results. In addition, department personnel may collect duplicate samples for assay in their laboratory in order to assure comparability of results throughout the State.

A proposal to require operators of a nuclear reactor or other installation which conceivably could cause significant environmental radiological contamination, to institute and maintain a program of environmental monitoring acceptable to the State Department of Public Health deserves further study.

Bureau of Radiological Health

Dr. Malcolm H. Merrill, Director, Department of Public Health, established the Bureau of Radiological Health within the Division of Environmental Sanitation on March 31, 1960. The primary functions of the new bureau were those of

1. Directing and co-ordinating all radiological programs carried out by all units of the department, and
2. Providing technical direction in the detection, measurement, and evaluation of ionizing radiation in the environment.

The necessity to create such a bureau is "prima facie" evidence of the increasing importance of ionizing radiation as a potential health hazard and of the concerted effort necessary to check continually all radiological sources. The newness of this bureau precludes a comprehensive assessment of its program in this report.

STATE FIRE MARSHAL

The 1959 Session of the Legislature enacted Assembly Bill 413 relating to the transportation of radioactive materials. The act added to the California Vehicle Code, Sections 33000-33002, which charged the State Fire Marshal with the responsibility of preparing regulations for the transportation of radioactive materials. Accordingly, the State Fire Marshal is presently compiling such regulations, patterned directly after those of the Interstate Commerce Commission, and hopes to present them for adoption early in 1961.

The Fire Marshal, however, is uneasy over the placement of such responsibility in his office. Mr. Ormond Stull, Deputy State Fire Marshal, in his testimony before the committee⁷ stated

"We feel that this authority should be transferred from the State Fire Marshal's office to some other state agency such as Public Health which has trained personnel who we feel could better administer this act

"An incident involving radioactive material is not a fire hazard as such but a hazard from possible poisoning of people who may be in the vicinity. This is distinctly a health hazard."

At present the personnel of the Fire Marshal's office lack intensive training in radiation detection and radiological safety. Although a staff of competent personnel could be recruited, such a step would seem needless duplication inasmuch as the same highly specialized personnel are already available through the Department of Public Health. In addition assignment of this responsibility to the Fire Marshal has apparently created an area of concurrent jurisdiction with the Fire Marshal and the Department of Public Health. Because radiation is always a potential health hazard, the Department of Public Health would retain some jurisdiction over radiation sources even while they were being transported in accordance with regulations from the Fire Marshal. In light of these considerations the Fire Marshal feels that his staff would be unable to do as effective a job in regulating the transport of radioactive materials as would the Department of Public Health.

THE CO-ORDINATOR OF ATOMIC ENERGY DEVELOPMENT AND RADIATION PROTECTION

Prior to 1959 there was no statewide control of radiological sources even though a number of state agencies had undertaken programs pertaining to radioactive materials. In addition there was no uniform means of communication or co-ordination in this field among state agencies or between the State and the federal government. An initial step in preparing the State for meeting the problems created by the rapidly increasing uses of radiation was taken with the enactment of AB 1403, introduced by members of the Assembly Public Health Committee. The principal provisions of the act established the following administrative subdivisions:

1 *The Office of Co-ordinator of Atomic Energy Development and Radiation Protection*

The co-ordinator was authorized to:

- (a) Advise the Governor in this area of concern,
- (b) Provide necessary liaison for the State with the federal government and with other states,
- (c) Co-ordinate the programs of state agencies and of local jurisdictions relating to atomic energy,

⁷ Ormond Stull, Deputy State Fire Marshal. Testimony before Assembly Interim Committee on Public Health, Subcommittee on Radiation Protection, October 6-7, 1960, pp. 55-61.

- (d) Review, prior to their adoption, all regulations issued by state agencies pertaining to radiation sources
- (e) Keep the Governor and state agencies informed of developments involving atomic energy,
- (f) Disseminate information to the public, and
- (g) Report to the Governor and the Legislature at each regular session

2. The Departmental Co-ordinating Committee

This committee, composed of heads of various state departments and agencies, meets upon the call of the co-ordinator and exists primarily to assist him in the co-ordination and development of relevant inter-agency and interdepartmental programs pertaining to atomic energy development and radiation protection

3. An Advisory Council

This group is basically a citizens' committee whose primary purpose is to evaluate the programs of the various state departments and agencies and report directly to the Governor

In this instance the co-ordinator acts as secretary, and the Governor selects the chairman from among his nine appointed members from each of the following fields: industry, labor, medicine, education, science and technology, agriculture, insurance, city government, and county government

Activities of the Co-ordinator

All agencies of government, civic and technical groups, involved with atomic energy or radiation protection are unanimous in their endorsement of the Office of Co-ordinator. The consensus is that the co-ordinator has been effective in bringing together the various state and private groups, and in supplying them with information which otherwise would have been unavailable. On a national level both the Atomic Energy Commission and the Joint Committee on Atomic Energy of the Congress have called upon the co-ordinator to express statewide views upon which California would otherwise have been forced to remain mute.^{*} Any assessment of the Office of the Co-ordinator must conclude that it has served as a most successful clearing house for all matters involving atomic energy or ionizing radiation. It must be noted, however, that in spite of the demonstrated necessity of this co-ordinating function, the co-ordinator operates under severest staff limitations. At present he runs a one-man office and has only secretarial assistance. Increasing demand for the services of the co-ordinator has exceeded, and will continue to exceed the level at which it is physically possible for one man to respond. The statute establishing the position of co-ordinator, for example, directs him to tend to public education in matters pertaining to radiation and radiological sources. Such an enjoinder could be admirably fulfilled by a monthly newsletter. Dr

^{*} Committee hearings, Subcommittee on Radiation Protection, Assembly Interim Committee on Public Health, October 6-7, 1960. Transcript, October 6, pp. 8-86, October 7, pp. 2-37.

Frances W. Herring,⁹ Public Administration Analyst with the University of California, stated in her testimony before the committee:

"What we want to avoid is the kind of scare which arose in November 1959 over the report that cranberries in the market carried residues of a spray considered by health authorities to be dangerous when eaten. Casual discovery of items of great public interest can become scare news, especially when the items are not accompanied by adequate background information, whereas the regular release of accurate data by the responsible authorities should tend to build the public's confidence that its health, safety, and welfare are in competent hands.

"Partly in order to meet these obligations, then, I suggest that the Atomic Energy Co-ordinator issue, perhaps monthly, a routine information bulletin, sent automatically to state agencies, mayors, councilmen, and county supervisors, and made available on request to any other interested agency or individual."

Lack of technical assistance has left the co-ordinator no time to prepare such a vehicle and thus has hampered the kind of local and public education the law envisions. As the users of atomic energy increase and the demands upon the co-ordinator's office increase, such a need may be expected to increase proportionately.

Briefly, the co-ordinator has engaged in the following general activities during the first term his office has functioned:

Information Service Informing the Governor on the effects of fallout, disseminating information on the effects of strontium-90 in milk, speaking engagements—Governor's Conference on Industrial Safety, California Democratic Council, and other civic and technical groups, disseminating information on atomic energy and radiation to various news media.

Labor Relations Conferences with legal authorities and with the Industrial Accident Commission on the subject of workmen's compensation as it relates to radiation hazards.

Technical Assistance Supplied to the State Fire Marshal in his recently acquired statutory responsibility for the transport of radioactive materials, supplied to AEC licensees and contractors in problems relating to ocean waste disposal operations.

Intergovernmental Relations Discussion with various city and county officials concerning radiation safety programs; conference with Long Beach City Health Office to delineate local and state responsibilities, conference with Los Angeles Harbor District on proposed revision of a local ordinance regulating movement of radioactive wastes through the harbor, clarifying problems of radioactive waste removal with the city council of Antioch, conference with U. S. Coast Guard and Bay area port authorities to discuss movement of radioactive cargoes through the Bay area ports, suggestion of criteria for selecting nuclear reactor sites submitted to Joint Committee on Atomic Energy of the Congress, discussed with AEC licensing requirements for certain radioactive waste disposal operations.

⁹ Dr. Frances W. Herring, Public Administration Analyst, Bureau of Public Administration, University of California, testimony before Assembly Interim Committee on Public Health, Subcommittee on Radiation Protection, October 6, 1960, p. 66.

Interagency Co-ordination Co-ordination of conference of interested state agencies to discuss criteria for choice of sites for nuclear reactors and possible hazards arising from their operation, determination with the State Attorney General's Office of the type of state legislation which would be required to permit the State to assume some of the regulatory authority now exercised by the AEC, co-ordinate the inspection systems of the Department of Public Health and the Division of Industrial Safety, advising the Department of Public Health in formulating regulations and inaugurating a program for registration of radiation sources

Robert C Thorburn,¹⁰ representing General Electric Company, stated

"General Electric Company recently conducted a nationwide public opinion survey that confirmed the fact that 'progress in atomic pursuits is no longer solely dependent upon the technical competence of a knowledgeable few but depends upon the understanding, acceptance and confidence of an as yet unknowledgeable public' Our survey showed acceptance of atomic power installations is generally higher in the West, which is a compliment to Colonel Grendon and his educational program, but a great deal still needs to be done We therefore urge the State to join industry and the AEC in intensive public education efforts to lift the general level of public understanding "

¹⁰ Robert C Thorburn, Manager, Health and Safety, Atomic Power Equipment Department, General Electric Company, San Jose, California. Testimony before Assembly Interim Committee on Public Health, Subcommittee on Radiation Protection, October 6, 1960, p 88.

PART II

REAPPORTIONMENT OF CONTROL OVER ATOMIC MATERIALS

THE FEDERAL GOVERNMENT—ATOMIC ENERGY COMMISSION JURISDICTION OVER NUCLEAR MATERIALS

The unique circumstances attending the harnessing and development of atomic power have resulted in an equally unique pattern of regulations for atomic materials. Traditionally, regulatory powers invoked in the name of public health and safety have developed first at a local level because the circumstances justifying them were local in nature. In each case as the scope of the regulated activity expanded, the state entered the field to preserve intra-state regulatory uniformity. Further expansion brought federal regulation for the sake of inter-state uniformity. In the case of atomic materials the traditional local-state-federal regulatory progression was reversed. First developed by the federal government for military purposes, atomic energy remained for several years almost an exclusive federal domain. The Atomic Energy Act of 1946 first defined, in general terms, the federal program with respect to atomic energy, but it was not until the Atomic Energy Act of 1954 opened the way for participation by private enterprise that there was any legal way for industry to construct and operate nuclear reactors.¹

Atomic Energy Legislation

The Atomic Energy Act of 1946 was designed to prevent any individual or private agency from obtaining an amount of fissionable material "sufficient to construct a bomb or other military weapon." It did permit the Atomic Energy Commission which was created by it to distribute under license limited amounts of the type of material which is known as "special nuclear material" (SNM), and to authorize possession under license of the "source material" from which these special nuclear materials are derived. Source material then consists of uranium, thorium, and such natural minerals from which the fissionable isotopes uranium 235 and uranium 234 and 233 and the artificially produced element plutonium are extracted. These isotopes of uranium and the element plutonium constitute the special nuclear materials.

The act also provided for the distribution under license of "byproduct material," radioactive materials that are produced in the course of nuclear fission or made radioactive by exposure to the fissioning material. This term, byproduct material, refers to radioisotopes which are widely used for medical purposes either diagnostically or for therapy. Industry also employs radioisotopes widely in research and control of processes, for example, to control the thickness of paper or the density of cigarettes.

Under the terms of the 1954 act the restriction on the amounts of special nuclear material was relieved so that enough of such materials

¹ Atomic Energy Act, U.S. Code Annotated, Title 42, Sec. 2011 *et seq.*

to permit the operation of a nuclear reactor could be possessed by a private firm or individual under license. However, all rights, title, and interest in such materials remain the property of the United States.² The Atomic Energy Commission can issue licenses for the possession of special nuclear material to qualified applicants.³ In the case of source and byproduct materials, although the federal government did not retain title to all such materials, it maintained the exclusive right to license users of them.⁴ Additional provisions of the act further vest authority and responsibility for protection of the public health and safety in the Atomic Energy Commission.⁵

In spite of these provisions the extent to which the federal government had pre-empted this field in the interest of health and safety remained in doubt. If the act evinced the federal government's intention to occupy this field completely, then the states probably could not validly legislate. Although there were various oblique references which would support federal pre-emption, the 1954 act lacked any clear statement to this effect.

1959 Amendment to the Atomic Energy Act

This situation was remedied to a great extent by a 1959 amendment to the Atomic Energy Act. During the 1954-1959 period many states had shown increasing interest in the atom. In fact a number of states had rather hesitantly adopted state atomic energy laws and regulations. As the question of federal pre-emption became more pressing, Congress acted to settle the issue by adopting, in September 1959, an amendment to the Atomic Energy Act.⁶ The amendment authorized the Commission to enter into agreements with the Governor of any state providing for the discontinuance within that state of federal regulatory authority over certain classes of fissionable materials and radioactive materials. Under the terms of the amendment the Commission is authorized to enter into such agreements if

- (1) The Governor of that state certifies that the state has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement, and that the state desires to assume regulatory responsibility for such materials, and
- (2) The Commission finds that the state program is compatible with the Commission's program for the regulation of such materials and that the state program is adequate to protect the public health and safety with respect to the materials covered by the proposed amendment.⁷

At the same time the Commission was specifically precluded from entering into any agreement which provided for discontinuance of any of its "authority and responsibility" with respect to the regulation of

- (1) The construction and operation of any production or utilization facility (i.e. a reactor or a plant for chemical processing of nuclear fuels),

² U.S. Code Annotated, Title 42, Secs. 2012h and 2072.

³ *Ibid.* Sec. 2073.

⁴ *Ibid.* Secs. 2092 and 2111.

⁵ *Ibid.* Secs. 2073, 2093, 2099, 2111 and 2201.

⁶ Public Law 86-373, 72 Stat. 688. See Appendix I for a copy of the amendment.

⁷ U.S. Code Annotated, Title 42, Sec. 2021d.

- (2) The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility,
- (3) The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission,
- (4) The disposal of such other byproduct, source, or special nuclear material as the commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed of without a license from the commission.⁸

Thus the law applies to some but not to all atomic energy activities now regulated exclusively by the Commission. Principally it applies to radioisotopes whose use and federal licensure is widespread but whose potential hazard is local and limited. In the case of these isotopes, moreover, radiation hazards are similar to those from other radiation sources already subject to regulation by the states, such as X-ray machines and radium. The amendment in effect draws a line between the types of activities deemed appropriate for individual states at this time and other areas in which federal regulation is still necessary. Specifically under the provisions of the amendment a state could acquire jurisdiction over byproduct materials, source materials and special nuclear materials in quantities not sufficient to form a critical mass.⁹

It is evident from the terms of the amendment that the Atomic Energy Commission has the authority and responsibility to regulate these nuclear materials for the protection of public health and safety. In the absence of an agreement between the governor of a state and the Atomic Energy Commission, however, it does not mean that the state is powerless to protect public health from dangers incident to the possession and use of such materials. The state could still legislate for the public health and safety if such measures did not attempt to regulate or control the possession of source, byproduct or special nuclear materials. A state could, for example, prohibit persons not so authorized from coming dangerously close to atomic facilities.

The federal government, in addition, would retain certain rights of pre-emption even after it had entered into an agreement with a state. The Commission retains the authority, upon its own initiative, after reasonable opportunity for a hearing, to terminate or suspend its agreement with the state and reassert its licensing and regulatory authority if it determines such action is required to protect the public health and safety.¹⁰ Similarly, a state that has entered into such an agreement may voluntarily terminate it.

The State

From the viewpoint of the State of California the first consideration with reference to such a transfer of jurisdiction is the consideration of desirability. In general, the idea of transfer of jurisdiction has

⁸ *Ibid.* Sec. 2021c.

⁹ "Critical mass"—fissionable materials of this type if brought together in sufficient quantities will produce a fission reaction. Uncontrolled, such a reaction becomes a nuclear explosion, controlled, e.g., in a reactor, it is a source of power. The term "critical mass" refers to the quantity of any given nuclear material necessary to initiate such a reaction.

¹⁰ U.S. Code Annotated, Title 42, Sec. 2021j.

had a history of state support. The impetus for the enactment of Public Law 86-373 came initially from the states. As recently as June 26, 1960 California supported the following resolution adopted by the 52d Annual Governors Conference:

"State Regulation of Nuclear Material

"Whereas in 1959 Congress amended the Atomic Energy Act of 1954 to establish a procedure whereby states may assume the regulation of byproduct, source and special nuclear materials in the interests of health and safety, and

"Whereas criteria have been drafted and suggested state legislation is being developed to establish the necessary state legislative and administrative framework within which states may perform these regulatory functions,

"Now, therefore, be it resolved That each state examine its present statutory authority and administrative structure and take whatever steps are necessary so that when desirable and practicable the state, by agreement with the Atomic Energy Commission, may assume regulation of byproduct, source and special nuclear materials."

Such a transfer is particularly meaningful and justifiable if it occurs as part of a general pattern of statewide radiation control. Because of a steady increase within the state of medical and industrial uses of radiation sources, the sources now regulated by the Atomic Energy Commission account for a relatively small proportion of the total radiation exposure of the population. Frank Stead, Chief of the Division of Environmental Sanitation, State Department of Public Health, reporting on the required registration of radiation sources stated that

" radiation sources *not* now controlled by AEC represent by far the largest segment of the total (radiation) problem on a quantitative basis. Clearly a critical question for the Legislature is to determine to what extent these sources should be regulated."

It is also a fact that any state regulatory program would have to deal with the same types of materials which are controlled by the AEC. Alexander Grendon, State Co-ordinator of Atomic Energy Development and Radiation Protection, has explained the difference between state and AEC jurisdiction:

"What the federal government is concerned with . . . is the authority it is prepared to relinquish over certain materials. These are by no means the only sources of radiation. We have long been acquainted with natural radioactive materials (such as) radium and thorium. . . . We have long used X-ray instruments. We have particle accelerators, such as cyclotrons and betatrons, and linear accelerators, and we have radiation in the form of X-rays coming from vacuum-type tubes used in some radar sets. (Thus) we have problems with respect to X-ray and radioactive materials that have been no concern of the AEC."

¹¹ Frank Stead, testimony before Subcommittee on Radiation Protection, Assembly Interim Committee on Public Health, October 6-7, 1960, Transcript, p. 35.

"The AEC has been concerned with what has been developed from the wartime use of fissionable materials. They discovered that fission, i.e., the splitting of certain atoms, could be controlled and made a source of controlled power and that also in the course of this fission process some radioactive materials were produced and that in addition this fission process can be used to make other materials radioactive. What the AEC licensing program controls are these radioactive materials. Precisely the same radioactive substance, precisely the same radioisotope, if produced in a cyclotron and if produced in a reactor occupy two different statuses. The piece of material that came out of the cyclotron is in the State's jurisdiction, the AEC has never exercised control over it and doesn't propose to. The piece of this same material that came out of a reactor is subject to AEC licensing. One would hardly say, therefore, that (the State) should contemplate a program to license the handling and use of one piece of this material and ignore the control of the other." ¹²

Because of the physical identity of nuclear materials now controlled by the AEC with those which the State would have to regulate in any statewide radiation control program, California's acceptance of the proffered AEC jurisdiction would preclude any artificial limits to such a program. A distinction between nuclear materials based on their origins rather than their use seems administratively purposeless. Of much more practical value is the approach which would enable the State to exercise control over all radiation sources whose effects are primarily local and thus of immediate concern to the State. The proposed transfer of AEC jurisdiction over source, byproduct and special nuclear materials is designed to effect just such a program.

In addition to the fact that radiation control is a matter of local health and safety, there is another obvious advantage to state regulation, viz., that the regulatory body is closer to the object of control and thus in a position to provide a more vigorous program of enforcement. Commenting on this point, Charles F. Eason, Counsel for Federal-State Relations, United States Atomic Energy Commission observed,

"in California now if you have a problem which cannot be settled or discussed completely at the field office level, it has to go back to Washington for resolution. (If the state accepted the proposed jurisdictional transfer), this of course, would no longer be necessary and you would have a closer working relationship with your own people." ¹³

Alexander Grendon amplified this same point

"Regulation involves detailed work that must be accomplished on the scene. When the agencies that control the whole program are within the state, that control becomes much more direct and much more vigorous. It can lose vigor with distance. When, for

¹² Alexander Grendon, testimony before Subcommittee on Radiation Protection, Assembly Interim Committee on Public Health, August 18-19, 1960. Transcript pp 53-54.

¹³ Subcommittee hearing, August 18-19, 1960, Transcript p 21.

example, the Atomic Energy Commission's inspectors have to present a report in writing to people in Washington who must at that distance try to evaluate the matter or when a hearing examiner . . . must proceed from point to point to maintain a schedule of hearings, the problem of enforcement and control is far more difficult than when in the hands of local agencies. The advantage of control in state and local hands means that people who are acquainted with people in the places involved deal with the problems and can accomplish their purpose without having to resort to formal enforcement action. The United States Public Health Service stands in relation to state health departments and other health agencies in public health matters much as the AEC presumably would stand with respect to radiation activities, if the state undertook a regulatory program."¹⁴

The key issue involved in ascertaining the desirability of such a jurisdictional transfer is the nature of the radiation program demanded by a state's current development. If, for example, a state does not yet need a regulatory program for radiation sources similar to those already controlled by the Atomic Energy Commission, jurisdictional transfer would accomplish little from the state's viewpoint. If, on the other hand, a state already regulates, or is contemplating regulation of, radiation sources not under AEC jurisdiction, there is much to be said for the proffered jurisdictional transfer. In the latter instance such a step would be necessary for a comprehensive state regulatory program over all similar radiation sources.

CALIFORNIA'S RADIOLOGICAL PROGRAM

At the present time California does not have a comprehensive regulatory program for radiation sources. Alexander Grendon has best summarized the elements of control which do exist:

"What the State of California has at present in the way of control and regulation is the result of a succession of measures. Our Division of Industrial Safety in the Department of Industrial Relations was in fact the first state agency the country over to set up regulations regarding radiation hazards in their Safety Orders—Title 8, Group 6 of the Administrative Code. The Group 6 Safety Orders were first established in 1950 and revised in 1955.

"Our Department of Public Health has certain measures in the statutes that have given it control to an indeterminate extent of some aspects of radiation safety, particularly following from the statute which set up my office (Coordinator of Atomic Energy Development and Radiation Protection) and simultaneously prescribed that the Department of Public Health should set up a registration program for all sources of radiation within the state.¹⁵ It is not a regulatory program, it is not a licensing program, it doesn't have any teeth in it, but it does require everyone who has a source of radiation to supply information about it, and this is the beginning of appropriate regulation."¹⁶

¹⁴ *Ibid.* pp. 59-60.

¹⁵ Health and Safety Code, Division 20, Sec. 25780.

¹⁶ Subcommittee hearings, August 18-19, 1966, Transcript pp. 49-50.

To say that California has no total radiological program is not to say that the State is ill-equipped to assume jurisdiction now exercised by the AEC. Mr. Grendon has made it quite clear that existing administrative and staff groups are competent to assume the functions which the AEC contemplates releasing.

"... The administrative and clerical help that are required in the AEC San Francisco operations office are already present in our Department of Public Health or our Division of Industrial Safety. There is no need for additional administrators because (existing personnel) are already involved in maintaining the public health and welfare with respect to radiation hazard.

"In other words, since there are a number of activities in (the Department of Public Health) and the Division of Industrial Safety requiring the maintenance of a technically qualified staff, we are only speaking of augmenting an existing program when we speak of undertaking (the AEC offer)." ¹⁷

In terms of cost Mr. Grendon estimates that the licensing and regulatory activities now exercised by the AEC over the approximately 1,000 California radiation sources under their jurisdiction could be assumed by the State at an annual expense of \$150,000 to \$200,000. ¹⁸ For a total program of licensing and inspection the cost to the State as estimated by a subcommittee of the Departmental Co-ordinating Committee on Atomic Energy Development and Radiation Protection was \$450,000. The possibility of meeting these costs by a license or inspection fee to be paid by each applicant was noted.

If the State should require assistance in developing a suitable radiation program, the AEC will provide training for state personnel including:

- (1) An on-the-job training program for orientation and experience in licensing, compliance and enforcement functions, as well as field inspections;
- (2) Intensive course in health physics using Commission facilities;
- (3) Formal training through health physics fellowship programs at qualified universities.

Other aids to the states include a list of proposed criteria for state guidance in evaluating the adequacy of present state radiological control agencies and a model state radiation control act proposing alternative methods of state radiation control. ¹⁹

IMPLEMENTATION OF JURISDICTIONAL TRANSFER

There has been no opposition to the idea of jurisdictional transfer on the grounds that it is not a legitimate and justified exercise of the State's interest in health and safety. Some large commercial users of radioisotopes, however, have expressed reservations about problems

¹⁷ *Ibid.* pp. 70-71.

¹⁸ Subcommittee hearing, October 6-7, 1960, Transcript p. 4.

¹⁹ For a list of the criteria see Appendix II, for the model radiation control act see Appendix III.

such a transfer would be likely to create. Donald E. Hull of the California Research Corporation, a subsidiary of the Standard Oil Company of California, voiced, on behalf of the Western Oil and Gas Association, the "consensus" of members of the California petroleum industry who presently use radioisotopes under AEC supervision:

"... There is a big disadvantage in the state licensing of radioisotopes . . . I'd like to illustrate it by the situation our own company would be in. We are licensed by the Atomic Energy Commission to perform tests with radioisotopes in nine different states, and all of these are under the supervision and control of one office in Washington. If the authority to license radioisotope(s) . . . is transferred to the states, it means that we will have to get nine different licenses instead of the one that we now have. Since these licenses are for a period of time, it would mean that periodically we would have to go back and renew nine different licenses. It's hardly conceivable that under such circumstances we would always be dealing with people in all of these nine states as competent and as understanding as the people we now deal with in the Atomic Energy Commission. I believe this would constitute a serious disadvantage by putting excessive administrative red tape in the further expansion of isotopes . . .

"My company is not alone in this position . . . I think that this is typical of many of the larger users of radioisotopes in industry. It's a typically interstate operation and therefore in principle it appears that it would be more efficiently administered by a federal agency than by the individual states."²⁰

C. C. Ross, Vice President and Manager of Aerojet-General Nuclear, takes much the same stand in a written opinion:

"Contracts with the states (would mean) the substitution of multiple jurisdictions and their somewhat diverse regulations in the place of the nationwide uniformity achieved up to now by the AEC . . . It appears that the company doing business in more than one state may shortly be compelled, with the expenditure of increased time and overhead costs, to accustom itself to the differing requirements of many contracting states."²¹

That such considerations are not major deterrents to state regulation is corroborated by other spokesmen of industry. Don W. Mitchell, attorney for the General Atomic Division of General Dynamics Corporation, conceded that,

"From the standpoint of our own activities we can see many complexities and difficulties (under a state regulatory program) . . . Should it be determined that the advantages to the State in assuming regulatory responsibility will be sufficient to outweigh the disadvantages and therefore that additional legislation may be desirable, we believe that a full understanding of the problems in this intricate and highly technical field will better enable legislative action to be carried out so that a full measure of protection

²⁰ Subcommittee hearing of August 18-19, 1960, Transcript pp. 138-140.

²¹ Written opinion in lieu of testimony at hearings, submitted to Hon. W. Byron Rumford, Chairman, Subcommittee on Radiation Protection, Assembly Interim Committee on Public Health, September 23, 1960.

can be assured for the health and safety of the people of California while at the same time permitting the continued growth of this important segment of California industry."²²

R. C. Thorburn, Manager, Health and Safety, Atomic Products Division, General Electric Company, concludes,

"Specifically we believe that a transfer of regulatory authority to California would be beneficial. (Some) disadvantages apparently center around interstate activities such as waste disposal, shipping, etc., which will require co-operation among the states. General Electric does not believe that these disadvantages are insoluble problems, however, since the states have already evidenced solution of similar problems in other fields."²³

Kenneth Newman, General Manager of Isotopes Specialties Company, a division of Nuclear Corporation of America, which operates in 48 states, favors the proposed regulatory transfer,

"In general we feel that the transfer would be in the best interests of the State. We believe that the transfer could insure more complete protection of radiation workers and the general public."²⁴

Other objections and reservations about the proposed transfer have been of the same type, i.e., procedural rather than substantive. Both state agencies and businesses, for example, have reservations about some of the AEC's proposed criteria for the transfer. At this stage of development such reservations and their solutions must remain speculative because the State has not actually entered into negotiations with the Atomic Energy Commission in an attempt to solve these problems. If the desirability of such a transfer is unquestioned from a health and safety viewpoint, then its feasibility can be tested only by actual negotiation. At present, however, the powers of the Governor cannot be construed to grant him the authority to enter into formal negotiations with the AEC. Specific legislative action is required to grant such authority.²⁵ The committee recommends legislative authorization for the Governor to enter into negotiations with the Atomic Energy Commission for the transfer to the State of California of jurisdiction over byproduct, source, and special nuclear materials which is now exercised by the Commission, reserving to the Legislature the right to approve or disapprove the results of such negotiations.

²² Subcommittee hearing, August 18-19, 1960, Transcript pp. 159-160.

²³ *Ibid.* p. 173.

²⁴ *Ibid.* p. 177.

²⁵ For suggested forms of such legislation see Appendix III.

PART III

NUCLEAR FALLOUT SHELTERS

Public concern about nuclear fallout and the need for some public shelter program rests on the assumption that a large scale nuclear attack upon the United States is at least a definite possibility. If such an assumption is granted, each state must then determine its responsibility in protecting the health and safety of its citizens from the effects of fallout. Such determination, in turn, is practicable only after review of the nature of fallout and the specific types of protection demanded.

NATURE OF NUCLEAR FALLOUT

The effects of nuclear weapons in causing death and injury are divided into two phases

1 Blast and Thermal Effect

A thermonuclear explosion is characterized by immediate blast and thermal radiation of great magnitude. The thermal radiation, i.e. the heat, emitted by a five-megaton explosion could be expected to produce third degree burns and charring within a radius of about 15 miles from the point of explosion. A greater destructive effect, however, would come from the blast. A high pressure wave would proceed at about the speed of sound in all directions from the point of explosion. The blast effects of a five-megaton explosion would destroy most surface structures within a radius of at least four or five miles from its detonation. Fires would start throughout an area of about 15 miles radius and the combined effects of blast and fire would cause a high proportion of deaths within the blast destruction radius. Those who are in underground shelters outside the actual crater formed by a burst at the surface of the earth have a good chance of survival. Such a crater, from a five-megaton bomb, would be about a half mile in diameter.

2. Fallout

A nuclear explosion of that size occurring near the ground would also draw up tens of thousands of tons of earth and mix it with radioactive fission products. These highly radioactive particles could be distributed by winds and air currents over areas extending for hundreds of miles.

Because of the possibility that a nuclear explosion could occur almost anywhere and because of the difficulty and expense involved in constructing blast-proof shelters, an extensive program for blast and thermal protection seems economically unfeasible. Realistically, therefore, a blast area would most likely have to be regarded as an expendable area. The characteristics of fallout radiation, however, make protection against its effects entirely feasible. Specifically, the factors that make protection possible are:

- 1 The radioactive intensity of fallout is rapidly diminished by natural decay processes in the radioactive particles themselves. The decline in the radioactivity of fallout material proceeds at a rate which reduces

the intensity level after seven hours to about 10 percent of the level that existed at one hour after the explosion, and after two days to about 1 percent of the one-hour value. After two weeks it would be down to about one-tenth of 1 percent. Thus an initial radiation level (i.e., a level observed at one hour after detonation) of 3,000 roentgens per hour would decline to 300 roentgens per hour after seven hours, to 30 roentgens per hour after two days and to three roentgens per hour after two weeks.

The need for protection against radiation is clearly vital in the early hours and days, particularly since fallout will descend relatively slowly and allow a minimum of at least a half hour to take shelter.

2 The intensity of radioactivity in the form of gamma rays (which are the most penetrating component of the radioactivity due to fallout) diminishes rapidly with distance from the radioactive material. Radiation intensity is reduced in proportion to the square of the distance from the radiation source. Thus, neglecting the additional reduction due to the shielding effect of the air molecules (see 3, below), radiation is only one-quarter as harmful at a distance of 200 feet as it is at 100 feet. At 400 feet it is only one-sixteenth as bad as at 100 feet. By getting away from fallout material, therefore, such as by going to the intermediate floors of a tall building, the harmful effects can be very much reduced.

3 A sufficient mass of any kind of material will provide an efficient shield from radioactivity. Gamma radiation penetrates thin layers of light materials such as clothing or the wooden walls of a house with only a very slight reduction in intensity. Material of greater density, and of greater thickness, however, substantially reduces the radioactivity. A shield of 17 inches of concrete or 25 inches of earth, for example, could reduce the intensity of fallout radiation by a ratio of 100 to 1. Thus an initial radiation of 3,000 roentgens per hour would be reduced to 30 roentgens per hour behind such a shield. This shielding reduction combines with the natural decay of fallout particles; thus, if the 3,000 roentgens per hour occurred in the open at one hour after detonation, the intensity after seven hours for a person shielded as described would be about three roentgens per hour, and, after two days, it would be reduced to about one-third of a roentgen per hour.

The characteristics of fallout are obviously only one side of the question of fallout protection. The other side involves the effects of radiation in human beings and the tolerable levels they can absorb. The position taken by Dr. Crawford S. Sams, Consultant in Biomedical Effects of Radiation and a research physician at the University of California, is representative of some of the research findings.

"We know that since we have been able to introduce the factor of protraction of dosage, that is, the receiving of a dose over a period of hours or days, that if we protect individuals against a single acute exposure at any one time not to exceed 200 roentgens that he can subsequently receive additional dosage over a period of time to accumulate up to 1000 roentgens exposure in a year without measurable acute effects, such as lethality. If we increase

this total accumulated dose to 3000 roentgens (per year) then we may expect up to 10 percent of the population to show marked measurable effects."¹

In light of this statement the critical problem with regard to radioactive fallout is to prevent the individual from absorbing a single acute radiation dosage of over 200 roentgens. The concept of a fallout shelter system is designed to effect just such protection by keeping the individual shielded for a period of two weeks. At the end of this period he could in most cases be evacuated safely, or perhaps could even remain in the area, without absorbing fatal amounts of radiation.

THE NATIONAL SHELTER PROGRAM

On May 7, 1958 the Office of Civil and Defense Mobilization announced a National Shelter Policy. In a general way it mapped out the following six areas for federal action:

1. Education—with emphasis on facts about fallout and steps which can be taken to minimize its effects
2. Survey of existing shelter facilities, on a sampling basis, to demonstrate the value of existing structures in providing fallout protection
3. Research to show how fallout shelters can be incorporated in existing as well as new buildings.
4. Prototype design and construction—involving both research and demonstration.
5. Leadership and example—by incorporating fallout shelters in appropriate new buildings
6. Incorporation of shelters in all existing federal buildings (This latter objective has not yet been financed)

Leo A. Hoegh, Director of the Office of Civil and Defense Mobilization, recently reported to the Congress of the United States on the implementation of this plan. The following account is a summary of his report.

During the fiscal years 1959 and 1960, the federal government spent \$10,284,000 to implement the National Shelter Policy. As of March, 1960, the Office of Civil and Defense Mobilization reported the following progress. Radio, television, and the press have been employed extensively in an attempt to alert the public to the dangers of fallout. Announcements and news stories have been circulated by these media as a public service. In addition several civil defense films have been produced and are available to interested civic groups. Civil defense exhibits have been displayed at all important public exhibitions. Surveys of existing shelter facilities have been conducted in carefully

¹ Testimony before Subcommittee on Radiation Protection, Assembly Interim Committee on Public Health, November 15-16, 1960. Transcript p. 43. The figure of 200 roentgens as the maximum permissible short-term radiation dosage has been officially adopted by the Office of Civil and Defense Mobilization. See the statement of Leo A. Hoegh, Director, Office of Civil and Defense Mobilization before the Subcommittee on Military Operations, House Committee on Government Operations, March 25, 1960. Transcript p. 6. In this connection it must be noted that the figure of 200 roentgens applies only to the maximum amount of radiation which would not physically incapacitate an individual. The eventual genetic effects of such a dosage which may occur are not here at issue.

chosen metropolitan and residential areas throughout the nation. Results indicate that although most large buildings would provide some degree of fallout protection, or at least could be easily modified to do so, most residential structures would not. Research conducted in conjunction with the shelter program has provided new technical information about shelter construction which, in turn, has been made available to architects and engineers. The program for construction of prototype shelters has been planned in detail and envisions inclusion of dual-purpose prototype shelters in subways, underground parking garages, and as part of the federal highway program. In addition, plans call for the construction of a family fallout shelter for demonstration purposes at each regional office of the Office of Civil and Defense Mobilization. In California prototypes will be constructed in Sacramento, San Diego and Los Angeles Counties. Approved shelters are currently being built into five carefully selected new schools and hospitals being financed at least in part by federal funds. Specific request for funds for fallout protection in new federal construction was made for only one building in fiscal 1960. As yet no funds have been allocated to fulfill the Shelter Policy objective of providing shelter protection for existing federal buildings.²

Mr. Hoegh is optimistic in his assessment of the implementation of the Shelter Policy.

"I can say that the National Shelter Policy has met with reasonable success. It has been accepted by most leaders of government at all levels. The extent of public interest as evinced by correspondence, by wide press, radio, and television coverage, and by inquiries about shelter plans—all this is encouraging, despite some delay in obtaining appropriations to speed the action elements of the policy."³

It is quite apparent from the stated objectives of the National Shelter Policy, from the way in which it has been implemented, and from the expressed satisfaction of the Director of Civil and Defense Mobilization, that the policy and the action it envisions are *primarily* educational in nature. There is no aggressive federal leadership in providing nationwide fallout protection. Because the physical problems of shelter construction vary considerably from one area to the next, and thus are admittedly best administered by local jurisdictions, the federal role in shelter construction has been principally one of providing information and encouragement to state and local levels.

SHELTER EFFORTS IN CALIFORNIA

The effects of this permissive type of federal approach are manifested in the manifold reaction in California to the shelter policy. State and local civil defense agencies, financially and administratively unable to insist on mandatory shelter construction, have adopted a policy of public education and encouragement of private efforts. This approach has had varying methods of implementation and varying degrees of success. In November 1960, the Los Angeles Civil Defense office estimated that approximately 100 privately owned shelters had

² Leo A. Hoegh, *op cit* pp 5-33

³ *Ibid* p 45

been constructed in their jurisdiction within the last six months⁴ In March 1960 the same office had estimated that there were approximately 10 private fallout shelters in Los Angeles⁵ Thus at present there should be approximately 110 privately owned fallout shelters in an area with a population of close to 6 million.

Such estimates are quite likely to be conservative because there are indications that a number of shelters are built surreptitiously. Joseph J. Micciche, Director of Civil Defense for Los Angeles, states that,

"Many people who have shelter facilities don't want even their neighbors to know they have constructed a shelter. They want the shelter all to themselves. Some people have planned to stock their shelter with a rifle and ammunition to ward off intruders. Others don't want anyone to know they are concerned enough with the international situation to construct a shelter. One group has called itself 'Shelters Anonymous,' and only members of the group know where their shelters are located."⁶

Allan K. Jonas, Director of the California Disaster office, corroborates this allegation

"Shelters Anonymous (has) built shelters, mostly illegal, because they don't comply with building codes. They have banded together so that they know where one another is but they are sworn to secrecy not to share this information. They don't want to be laughed at by their neighbors; they don't want to face the rather onerous job of holding off their neighbors at gunpoint should the whistle blow."⁷

The significance of estimates of shelter construction, even though these are somewhat unrealistic, is that at least they provide an indication of the overall inadequacy of the present private shelter program.

In addition to a general public apathy other major obstacles to private shelter construction include financing and taxation difficulties and inapplicable building codes. Mr. Jonas notes that,

"Financing is a real problem in shelter (construction). I have found that we can finance a swimming pool for five years at a fairly reasonable cost, but a shelter for only three. This is not sufficient incentive for a lot of people who would like to build shelters but cannot. If we could provide low-cost, long term financing for shelters, I predict a great increase in building."⁸

Fallout shelters, moreover, are generally categorized as a home improvement and subject to personal property and real estate taxes. Even when he is able to surmount financial barriers, the shelter builder is faced with circumventing building codes which impose requirements that were never intended to apply to fallout shelters. Many building

⁴ Joseph J. Micciche, Director, Los Angeles Office of Civil Defense Statement to Subcommittee on Radiation Protection, Assembly Interim Committee on Public Health, November 15-16, 1960. Transcript p. 140.

⁵ Hearings of the Subcommittee on Government Operations, House Committee on Government Operations, March 28, 29, 30, 31, 1960. Transcript, Appendix I, p. 264.

⁶ Subcommittee hearings, November 15-16, 1960. Transcript pp. 133-140.

⁷ *Ibid.* p. 9.

⁸ *Ibid.* p. 16.

officials, in fact, are against any relaxation of building codes for the construction of shelters Joseph J Micciche reports that,

"The International Conference of Building Officials stated last August (1960) that its policy was not to recognize this type of construction A majority of these structures, it said, will be used as accessory buildings to the dwelling, such as recreation areas or a living unit It alleged that this would create an impossible enforcement situation and would eventually result in sub-standard residential units" ⁹

One solution to the high cost of individual shelters has been the advocacy of publicly financed community shelters Allan K Jonas estimates that such shelters could be constructed at a cost of \$50 per person For this expenditure, he pointed out, much better radio, monitoring, and ventilation equipment could be provided than would be feasible in a family-type shelter ¹⁰ In addition, many large buildings, both public and private, have high shelter potential and can be easily modified to provide adequate community protection This is especially true of buildings with a concrete "core" or underground parking facilities

Opponents of a shelter program of this type contend that such shelters would be adequate only under certain conditions which would probably not obtain in the event of a nuclear bombing Present shelter designs, for example, assume that a "firestorm" would not accompany a nuclear blast Robert Ryan, co-chairman of the Hollywood Chapter of the National Committee for a Sane Nuclear Policy, describes the effects of a firestorm by referring to Dr Harrison Brown, noted Cal-Tech geophysicist, who states in his paper, "*The Community of Fear*:"

"A surface burst of a 10-megaton bomb would produce a crater about 250 feet deep and a half mile wide The zone of complete demolition would be about three miles in diameter Severe blast damage would extend to about nine miles from the center of the explosion, and moderate to major damage would extend out to 12 miles, or over an area of 450 square miles

"It is likely that firestorms will result from a thermonuclear burst over a large city A firestorm is a huge fire in which cooler air is drawn to the center of the burning area, elevating the temperature and perpetuating the conflagration Winds reach hurricane velocities The holocaust consumes the available oxygen in the air with the result that persons not burned to death may die of suffocation or of carbon monoxide poisoning" ¹¹

The Atomic Energy Commission, in its book entitled *The Effects of Nuclear Weapons*, states that the incidence of firestorms is dependent on the conditions existing at the time of the fire such as at Nagasaki, where the wind tended to carry the fire up the valley in a direction where there was nothing to burn However, at Hiroshima conditions were different:

"About 20 minutes after the detonation of the nuclear bomb at Hiroshima, there developed the phenomenon known as 'firestorm'

⁹ *Ibid.* p 137

¹⁰ *Ibid.* p 12.

¹¹ "*Community of Fear*," Harrison Brown-James Real, published by Center for the Study of Democratic Institutions, Santa Barbara, California, p 13

This consisted of a wind which blew toward the burning area of the city from all directions, reaching a maximum velocity of 30 to 40 miles per hour about two to three hours after the explosion, decreasing to light or moderate and variable in direction about six hours after Because of the strong inward draft at ground level, the firestorm was a decisive factor in limiting the spread of the fire beyond the initial ignited area. It accounts for the fact that the radius of the burned-out area was so uniform in Hiroshima and was not much greater than the range in which fires started soon after the explosion. However, virtually everything combustible within this region was destroyed."^{11a}

It may be assumed that a full-scale nuclear attack would blanket the nation with a large number of bombs. Mr. Robert Ryan in his testimony^{11b} reported that military personnel who testified at the Holfied Committee hearings maintained that the enemy would use at least two such bombs on every large city. Although the short-lived fallout products would dissipate extensively within a relatively short period, it is contended that such a "blanketing" type of attack would deposit enough long-lived fallout products, such as strontium 90, carbon 14, and cesium 137, that shelter occupants could emerge to a lethal world.

RESPONSIBILITY FOR FALLOUT PROTECTION

The type and degree of state action in the field of fallout protection depend largely on the State's assessment of its responsibilities in this area. The State has an obvious responsibility to protect the health and safety of its citizens, but since fallout is not exclusively a state or local matter, California must consider its responsibilities in the context of the national approach to fallout protection. The interstate nature of fallout would make it advisable that countermeasures not be allowed to develop haphazardly or to vary widely from state to state.

Fallout protection, in addition, is more than a health and safety measure. At all levels of government it has been viewed as an essential element of national defense. Allan K. Jonas, Director of the California Disaster Office,¹² Alexander Grendon, State Co-ordinator of Atomic Energy Development and Radiation Protection,¹³ Joseph J. Micciche, Director of the Los Angeles Office of Civil Defense¹⁴ and W. H. Perry, Director of the Contra Costa County Disaster Office¹⁵ are representative of this consensus among state and local officials. At the federal level fallout protection has been explicitly defined as a defense measure. The National Shelter Policy states in part,

"In the event of nuclear attack on our country, fallout shelters offer the best single non-military defense measure for the protection of the greatest number of our people."¹⁶

^{11a} "The Effects of Nuclear Weapons," prepared by the U.S. Department of Defense published by the U.S. Atomic Energy Commission, June 1957, p. 326-327.

^{11b} Subcommittee hearings, November 15-16, 1960, Transcript p. 56.

¹² *Ibid.* p. 9.

¹³ *Ibid.* Appendix I, p. 221.

¹⁴ *Ibid.* p. 125.

¹⁵ *Ibid.* pp. 117-118.

¹⁶ "National Shelter Policy," Office of Civil and Defense Mobilization, Washington, D.C., March 7, 1958, p. 1.

At the White House Conference on Fallout Protection, Secretary of State Christian Herter, maintained that,

"A vital part of our military strength for peace must be an effective civil defense program which creates a strong deterrent to possible enemy attack upon the United States. If we should be subject to nuclear attack, civil defense and measures for fallout protection offer the most practicable and feasible means of saving the greatest number of lives. Only thus can our defense power serve as a convincing deterrent." ¹⁷

At this same time the office of the President referred to fallout shelters as,

"the best single non-military defense measure for the protection of the greatest number of our people." ¹⁸

In spite of this admitted national responsibility for civil defense planning, federal efforts to date have been those of education and encouragement. ¹⁹ Although there is ample reason to justify a more aggressive national approach, no federal master plan for fallout protection has been undertaken. RAND Corporation, a nationally recognized consulting firm in the area of national defense, concluded its study of the nation's non-military defenses with the following recommendation:

"The principal policy suggestion stemming from this study is that the United States ought to undertake a serious research, development and planning program in the field of non-military defense." ²⁰

More recently Chet Holifield, Chairman of the Military Operations Subcommittee, House Committee on Government Operations, who has conducted extensive hearings on the subject of fallout protection, urged more forceful federal action. In a letter to the President he stated,

"A meaningful civil defense program must encompass, on a national scale, all the preattack preparations required to minimize loss of life and to insure the post-attack availability of resources necessary for national recovery. Responsibility for developing such a program rests with the federal government as part of its constitutional duty of providing for the national defense. The states and localities should be called upon to provide maximum assistance to federal authorities in developing a workable master plan (for civil defense)." ²¹

While acknowledging the need for more aggressive federal leadership in this field, responsible state and local civil defense officials feel that there are important measures which the State of California can, and

¹⁷ Statement presented at White House Conference on Fallout Protection, Washington, D C, January 25, 1960.

¹⁸ Press release, office of the President, The White House, Washington, D C, January 25, 1960.

¹⁹ *Supra* pp. 31-32.

²⁰ RAND Corporation, Report on a Study of Nonmilitary Defense, Report R-322-RC, July 1, 1958, p. 43.

²¹ Letter from Chet Holifield, Chairman, Military Operations, Subcommittee, Committee on Government Operations, United States House of Representatives, to the President of the United States, January 12, 1960.

should, undertake at this time Will H. Perry, Jr., Director of the Contra Costa County Disaster Office, concludes that the

"current national shelter policy, although politically palatable and economically sound from the governmental viewpoint, is not producing shelters in large enough numbers or rapidly enough to accomplish the objective. It is considered urgent that the following recommendations be adopted in the form of legislation, made mandatory on citizen and government alike, and implemented at the earliest date

- "1 Further encouragement should be given to the construction of home shelters. This encouragement is through the elimination or reduction from the property tax rolls of any qualified shelter adequately equipped and maintained for the sole or dual purpose of offering shelter from radiation. In addition, moneys expended in the construction and equipage of such shelters should be declared as exempt or partially exempt from federal and state income taxation. Only minimal building permit fees should be charged to that area of any structure designed primarily or dually for shelter from radioactive fallout. It should be made mandatory that all new home construction include fallout shelters.
- "2 All industrial and commercial facilities should be further encouraged to improve existent facilities which offer a shelter potential, or to construct shelter facilities, not only to protect their employees but also for the families of their employees. Such encouragement should be in the form of elimination or reduction from the property tax rolls of any facility modified or constructed and outfitted for the sole or dual purpose of providing shelter from radioactive fallout. Any moneys expended in the modification, construction or equipage of such facility should be declared as deductible or partially so, from corporate taxes. Only minimal or no fee for building permits should be assessed against any structure or portion thereof designed specifically for or through dual usage for, protection from radioactive fallout. It should be made mandatory that all new industrial and commercial building construction incorporate into the building design enough shelter space to accommodate the peak employee and visitor load in the planned facility.
- "3 Every existent public building which has a shelter potential should be modified to whatever extent is necessary to offer adequate fallout protection for the largest number of people possible. Not only should these buildings be modified, but should be equipped to serve this purpose. It should be made mandatory that all new public building construction incorporate into the building design enough shelter space to accommodate the peak employee and visitor load in the planned facility. Wherever practicable, the size of the shelter should be great enough to accommodate residents or workers from the surrounding vicinity. All future school buildings should be built as completely underground facilities wherever the soil and water conditions allow

Such school facilities are practical and would probably be no more costly than the current method of construction. The increased cost of below-ground construction is offset by the savings in the purchase of smaller parcels of land. Playgrounds would be placed on top of the facility.

- "4 Military defense alone is not capable of the total defense. In that the federal government is constitutionally charged with the responsibility for the defense of the public of this nation, the State Legislature should urge the federal government, by resolution, to take immediate steps to provide congregate-type shelters at federal expense in every community in the nation. Such a construction program will in itself lend impetus to the home shelter program and to the development of shelters in industrial, commercial, and public facilities. In order to insure a uniformity in the congregate shelter program, only the federal government is capable of providing the standardization necessary, and only the federal government is capable of financing such a project. If left to the states and local governments, a congregate shelter program would be as unco-ordinated and as ineffectual as the current one.
- "5 It should be mandatory on every level of government that they provide an adequate emergency operating center from which the elements of that government can adequately and efficiently carry out their responsibilities and duties before, during, and after aggressive attack on the United States.
- "6 An intensified public information program should be carried out during the implementation of the five previously mentioned recommendations. Such a program cannot take the place of any of the aforementioned, but should be designed to advise the public of their further responsibilities in their own protection. The axiom of 'actions speak louder than words' in the provision of adequate nationwide shelter is most certainly true."²²

Joseph J. Micciche submits the following recommendations:

- "1 That the cost of constructing a shelter be made a deductible item on the federal income tax, the deduction to be taken over a period of years.
- "2 That the Health and Safety Code requirements of the State, which govern local building codes, be reviewed with the suggestion that consideration be given to adding a new section covering shelters.
- "3 That the State give consideration to establishing an agency which will insure low-cost loans for shelter construction, particularly in cases where individuals may not be able to obtain credit or in other cases of hardship or unusual circumstances.
- "4 That the State Disaster Office should carry on, with increased vigor, a continuing campaign of public information and education on shelter construction.
- "5 That the Governor consider the appointment of a group of public-spirited citizens to make a study of the need for mandatory

²² Subcommittee hearings, November 15-16, 1960, Transcripts pp. 115-118.

shelter legislation to be enacted by the State Legislature, and that an effort be made to secure a foundation grant for this study."²³

Allan K. Jonas enumerates the specific areas in which he believes state action desirable:

"There are things that we as Californians can do . . . they are definite recommendations for legislation and for study

"1 First of all we should study where shelter exists . . . I would like to see a survey of existing state buildings to begin with and then perhaps expand the survey into other areas of state facilities—prisons, schools, colleges

"2 . . . building codes, need study. The cost of building shelters would be almost prohibitive. When I speak of \$50 per person cost on a community basis, (the shelter) does not comply with existing building codes. . . . We need study of those building codes which can be abrogated for emergency shelter. . . . Some form of inspection will be necessary to make sure that the shelter is not used for other purposes, if we allow the building codes to be relaxed in order to permit inexpensive shelters

"3 Tax incentives seem to be an intelligent approach . . . to urging the individual shelter or the company that wishes to build a community shelter for its employees. . . . Should not a person with the courage and foresight to build a shelter be exempted from the increase in . . . ad valorem, personal property, and real estate tax that would occur?" (In addition) the Congress should be memorialized to allow a writeoff against federal income tax

"4 Financing is a real problem in shelter (construction) . . . If we could provide . . . low-cost, long-term financing for shelters, I predict a great increase in building

"5 We must have shelter standards . . . We must set down . . . minimum standards for fallout and for blast

"6 . . . new public construction . . . set(s) an example for the people in local jurisdictions. . . . If we are to encourage cities and counties and individuals to build shelters for themselves . . . we on the state level must take it seriously enough to include it in our new state construction . . . This would also include study, perhaps a pilot study, in a half dozen new schools. . . . The State should consider . . . an incentive, perhaps matching funds with a school district

"7 . . . We need a protected state seat of government, and then eventually down to the county level and perhaps to the city. That means a place where information can be funneled, (and) accumulated . . . and instructions can be given to the public. (In addition) a protected seat of government is essential for the rebuilding process

²³ *Ibid.* p. 141

- "8 a program of public information seems terribly essential. people should know the nature of . radiation and fallout If you do not freeze with horror at the idea of nuclear fallout, you (will be) able to cope with it as individuals and as a state
- "9 . organization and training Unless you have people organized and trained for shelter work, especially in community (shelters), you have some problems There are certain things in the matter of organization and training that can make shelter living even under the worst and most austere conditions liveable and psychologically sound " 24

In conclusion, it seems clear that there are important areas of the problem of nuclear fallout protection which may warrant state action, even in the absence of a federal master plan. Serious study and consideration should be given to defining those areas in which immediate state action is imperative

²⁴ *Ibid* pp 18-21

APPENDIX I

PUBLIC LAW 86-373

86th Congress, 8 2568

September 23, 1959

AN ACT

To amend the Atomic Energy Act of 1954, as amended, with respect to cooperation with States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following section be added to the Atomic Energy Act of 1954, as amended

Atomic
Energy Act
of 1954
amendments
to STAT
919
45 USC
2011
note

"SEC 274 COOPERATION WITH STATES—

"a It is the purpose of this section—

"(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials,

"(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials,

"(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

"(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

73 STAT
688

"(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States, and

74 STAT
689

"(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable

"b Except as provided in subsection c, the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State—

Agreements
with States
43 USC
2071-2112,
2201

"(1) byproduct materials,

"(2) source materials;

"(3) special nuclear materials in quantities not sufficient to form a critical mass

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards

"c No agreement entered into pursuant to subsection b shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

"(1) the construction and operation of any production or utilization facility,

"(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility,

"(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission,

"(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission

Notwithstanding any agreement between the Commission and any State pursuant to subsection b, the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission

Exemptions

"d The Commission shall enter into an agreement under subsection b of this section with any State if—

"(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials, and

"(2) the Commission finds that the State program is compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement

Publication
in F R

73 STAT
1489
73 STAT
6111

"e (1) Before any agreement under subsection b is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection f shall be published once each week for four consecutive weeks in the Federal Register, and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate

"(2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The

agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor

"f The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in chapters 6, 7, and 8, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection b of this section Licensing requirements
Exemptions

"g The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible

"h There is hereby established a Federal Radiation Council, Federal
Radiation
Council consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings, participate in the deliberations of, and to advise the Council. The Chairman of the Council shall be designated by the President, from time to time, from among the members of the Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Council shall also perform such other functions as the President may assign to it by Executive order.

"i The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b. Inspections

"j The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with Termination
of agreement

which an agreement under subsection b has become effective, or upon request of the Governor of such State, may terminate or suspend its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that such termination or suspension is required to protect the public health and safety.

73 STAT
690
73 STAT
691

"k Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

Notice of
filing

"l. With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection c., the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application

42 USC
3201.

"m No agreement entered into under subsection b, and no exemption granted pursuant to subsection f, shall affect the authority of the Commission under subsection 161 b. or i. to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of subsection 161i, activities covered by exemptions granted pursuant to subsection f shall be deemed to constitute activities authorized pursuant to this Act; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 53

42 USC
2073

Definitions

"n As used in this section, the term 'State' means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia."

73 STAT
691

SEC. 2 Section 108 of the Atomic Energy Act of 1954 is amended by deleting the phrase "distributed under the provisions of subsection 53a," from the second sentence.

42 USC
2138

Approved September 23, 1959.

APPENDIX II

PROPOSED CRITERIA FOR GUIDANCE OF STATES AND THE AEC IN THE DISCONTINUANCE OF AEC REGULATORY AUTHORITY OVER BYPRODUCT, SOURCE, AND SPECIAL NUCLEAR MATERIALS IN LESS THAN A CRITICAL MASS AND THE ASSUMPTION THEREOF BY STATES THROUGH AGREEMENT

Introduction

These proposed criteria are being developed to implement a program, authorized by P.L. 86-373, which was enacted in the form of an amendment to the Atomic Energy Act and approved by the President on September 23, 1959 (copy attached). Under provision of this amendment, when an agreement between a state and the AEC is effected, the commission will discontinue its regulatory authority over byproduct material (radioisotopes) and source material (uranium and thorium) and also over special nuclear material (Uranium 233, Uranium 235 and plutonium) of less than a critical mass.¹

An agreement may be effected between a state and AEC: (1) upon certification by the Governor that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement and the State desires to assume regulatory responsibility for such materials, and (2) the AEC makes a finding that the state program is compatible with the commission's program for the regulation of such materials, and is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

After discussions with various state officials and representatives of organizations of state officials, the Atomic Energy Commission drafted proposed criteria, as set forth below, to provide assistance to the states in developing a regulatory program which is compatible with that of the AEC. The criteria are being circulated among states, federal agencies and other interested groups for comment, prior to formal adoption by the commission.

In co-operation with representatives of the states and the staff of the Council of State Governments, the commission is also preparing suggested state legislation and radiation regulations as additional assistance to the states in achieving compatibility of their programs with that of the AEC, as provided by the amendment. Uniformity in standards is essential in avoiding inconsistencies and difficulties in different jurisdictions which may hinder the atomic energy program or jeopardize the health and safety of the public.

The proposed criteria recommend that the state authority consider the total accumulative occupational radiation exposure of individuals. To facilitate such an approach, it is the view of the AEC that on overall radiation protection program is desirable. The maximum

¹ A summary of the commission's regulatory program covering these materials is attached as an Annex.

scope of each state's radiation protection program is not, however, a necessary or appropriate subject for coverage in the criteria. Consequently, they are silent on the question whether a state should have a total regulatory program covering all sources of radiation including those not subject to control by the AEC under the Atomic Energy Act, such as X-rays, radium, accelerators, etc

To assist the states in developing radiation control programs the AEC will provide training for state personnel, including (1) an on-the-job training program for orientation and experience in licensing, compliance and enforcement functions and in field inspections, (2) intensive courses in health physics (of 10 to 12 weeks) in commission facilities, and (3) formal training through health physics fellowship programs and a program designed for special assistance to states in radiation control (both programs cover an academic year of study as well as practical experience in health physics at commission facilities). The commission training programs are being co-ordinated with those of the U S Public Health Service

The PHS offers training courses and training assistance in the field of radiological health The radiological health training program conducted by the PHS provides intensive technical courses for professional public health personnel The graduate training program of the PHS, wherein state health agency personnel or PHS officers assigned to these agencies receive university training in radiological health, also provides trained professional personnel The Department of Health, Education, and Welfare will continue as the federal focal point for guidance and assistance to the states with respect to contamination by and biological effects from radiation sources not now under control of the Atomic Energy Commission

It is the policy of the President that the AEC enter into formal agreements with states pursuant to the act as rapidly as the states and the commission are prepared to do so To that end, the commission will welcome discussions and suggestions relative to the proposed criteria and, later, on the suggested legislative program and regulations The commission recognizes that states may now have radiation control programs, based on suitable legislation and appropriate regulations, which would permit early initiation of discussions which could lead to agreements Such discussions are welcome

Formal comments and suggestions with respect to the proposed criteria should be addressed to Mr John A McCone, Chairman, U S Atomic Energy Commission, Washington 25, D C

Inquiries about details of the proposed criteria or other aspects of the AEC's Federal-State Relations Program should be addressed to the Office of Health and Safety, U S Atomic Energy Commission, Washington 25, D C

OBJECTIVES

1 *Protection, Development* A state regulatory program should be designed to protect the health and safety of the people against radiation hazards and to encourage the constructive uses of radiation.

RADIATION PROTECTION STANDARDS²

2 *Standards* The state regulatory program should adopt a set of standards for protection against radiation

3 *Uniformity in Radiation Standards* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There should be uniformity on permissible doses and levels of radiation and concentrations of radioactivity. By uniformity is meant no more and no less than those standards fixed by Part 20 of the AEC regulations

For the past 30 years the National Committee on Radiation Protection and Measurements (NCRP) has been studying the entire area of permissible radiation dose, and during that time has made recommendations on the permissible radiation exposure. AEC's policy has been to follow these recommendations both in its own operations and in developing and administering its regulatory program. The basic radiation exposure standards in 10 CFR, Part 20, represent the legal adaptation of these NCRP recommendations. In addition, it is expected that guidance in the formulation of future radiation standards by federal agencies will be provided by the President, on the advice of the recently established Federal Radiation Council.

4 *Total Occupational Radiation Exposure* The regulatory authority should consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it, except exposures to patients for medical diagnosis and therapy.

5 *Surveys, Monitoring, Labels, Signs, Symbols* Surveys and personnel monitoring are important in achieving radiological protection and in determining compliance with safety regulations. It is desirable to achieve uniformity in labels, signs, and symbols, and the posting thereof, and it is essential that there be uniformity in labels, signs, and symbols which are affixed to radioactive products which are transferred to others.

6 *Instruction* Persons working in or frequenting controlled areas³ should be instructed with respect to the hazards of excessive exposure to radioactive materials and in precautions to minimize exposure.

7 *Storage* Radioactive materials stored in an uncontrolled area should be secured against unauthorized removal.

8 *Waste Disposal* In the release or disposal of radioactive materials, certain limited quantities may be safely discharged into the air, water, and sewers, and buried in the soil. These limits should be uniform, and as prescribed in Part 20. Holders of radioactive material desiring to release or dispose of quantities in excess of the prescribed limits should be required to obtain special permission from the appropriate state or federal regulatory authority.

9 *Regulations Governing Shipment of Radioactive Materials* The state should promulgate regulations applicable to the intrastate shipment of radioactive materials, such regulations to be compatible with, if not identical to, those established by the Federal Government (AEC,

²To give content to all criteria enunciated, there is being prepared a set of suggested state regulations and state legislation.

³"Controlled area" means any area access to which is controlled by the licensee. "Controlled areas" shall not include any areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a controlled area.

Interstate Commerce Commission, Federal Aviation Agency, Treasury Department, (Coast Guard), and Post Office) covering interstate shipment of such materials

10. *Records and Reports.* It is essential that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials, (b) keep records of the receipt and transfers of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority and (d) make available, upon request of an individual, data on his exposure

11. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases or circumstances, the regulatory authority should be authorized to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety

PRIOR EVALUATION OF USES OF RADIOACTIVE MATERIALS

12. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of radioactive materials that the regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user.

These categories fall into two groups—those material and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use.

13. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority should determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls

14. *Broad Research and Development Authorizations for Institutions.* In authorizing research and development involving radioactive materials, where an institution has people with extensive training and experience, the regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use

15. *Human Use.* The use of radioactive materials and radiation on or in humans should not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation

INSPECTION

16. *Purpose, Frequency.* The possession and use of radioactive materials should be subject to inspection by the regulatory authority and should be subject to the performance of tests, as required by the regu-

latory authority. Inspection and testing is conducted to determine, and to assist in obtaining, compliance with regulatory requirements.

Frequency of inspection should be based upon the degree of potential hazard associated with the particular category of use. The more hazardous uses should be inspected at least once each year. More frequent inspections may be required if there is questionable compliance.

17. *Inspections Compulsory, but With Minimum Interference* Licensees or permittees should be under obligation by law to provide access to inspection, but should be subject to minimum interruptions to, or interference with, their activities when such inspections occur.

18. *Notification of Results of Inspection* Licensees and permittees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

ENFORCEMENT

19. *Enforcement* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority should be equipped or assisted by law with the necessary enforcement powers. This may include, as appropriate, administrative remedies looking towards issuance of orders, or suspension or revocation of the right to possess and use materials, and the impounding of materials, the obtaining of injunctive relief, and the imposing of civil or criminal penalties.

PERSONNEL

20. *Qualifications of Regulatory and Inspection Personnel* Prior evaluation of applicants for licenses or authorizations and inspection of licensees or permittees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments—their selection, use and calibration—laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures.

To perform these functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in health physics. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of health physics. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training in health physics.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program.

and deal with both routine situations as well as some which will be out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of health physics.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in health physics but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainee could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in health physics.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

SPECIAL NUCLEAR MATERIAL

21 Conditions Applicable to Special Nuclear Material. The regulatory authority should recognize the ownership by the United States of all special nuclear material and the financial, security, and other conditions under which special nuclear material is made available. Authorization to possess and use special nuclear material should contain recognition of the duty of the holder to report to the AEC, on AEC prescribed forms (1) transfers of special nuclear material, and (2) periodic inventory data, and should contain recognition of the supervising regulatory authority of the AEC if the holder comes into possession of quantities of special nuclear material in excess of the State's jurisdictional limits.

22 Special Nuclear Material Defined. Special nuclear material, in quantities not sufficient to form a critical mass, shall be defined to mean uranium enriched in the isotope U 235 in quantities not exceeding 350 grams of contained U 235, uranium 233 in quantities not exceeding 200 grams, plutonium in quantities not exceeding 200 grams, or any combination of them in accordance with the following formula. For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination

should not exceed "1" (i.e. unity) For example, the following quantities in combination would not exceed the limitation and is within the formula, as follows-

$$\frac{175 \text{ (grams contained U 235)}}{350} + \frac{50 \text{ (grams U 233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

ADMINISTRATION

23 State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for

- a Formulation of rules of general applicability,
- b Approving or denying applications for licenses or authorizations to possess and use radioactive materials; and
- c Taking disciplinary actions against licensees or permittees

ARRANGEMENTS FOR DISCONTINUING AEC JURISDICTION

24 State Agency Designation The State should indicate which agency or agencies will have authority for carrying on the program and a summary of the legal authority There should be assurances against duplicate regulation and licensing by state and local authorities, and it may be desirable that there be a single or central regulatory authority

25 Existing AEC Licenses and Pending Applications In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by AEC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications, by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under state law, existing AEC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier re-examination or termination of the license

26. Relations With Federal Government and Other States The regulatory authority will be expected to recognize appropriate exemptions from its regulations for operations by the federal government and operations regulated by federal agencies, but should maintain and promote co-operative efforts and arrangements with the federal government and its agencies and among the states

There should be an interchange of federal and state information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems

27 *Execution, State Certification, AEC Finding, Publication* The agreement shall be executed by the Governor of the state on behalf of the state and by the Chairman of the Atomic Energy Commission on behalf of the commission The agreement shall contain or annex the certification of the Governor that the state has a program for the control of radiation hazards adequate to protect the public health and safety, with respect to the materials within the state covered by the proposed agreement, and that the state desires to assume regulatory responsibility for such materials. The agreement shall contain or annex the finding

of the Atomic Energy Commission that the state program is compatible with the commission's program for the regulation of such materials, and that the state program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

Within 30 days after the agreement is signed by the commission and the Governor, the agreement and exemptions shall be published in the Federal Register.

28 Exemptions From Federal Requirements, Advance Publication Before any agreement is signed by the AEC, the commission shall determine the exemptions which appear necessary from the licensing requirements contained in Chapters 6, 7, and 8 of the Atomic Energy Act and from its regulations applicable to licenses necessary or appropriate to carry out the proposed agreement, and the terms of the proposed agreement and the proposed exemptions shall be published once each week for four consecutive weeks in the Federal Register with opportunity for comment by interested parties on the proposed agreement and exemptions. Each proposed agreement shall include the proposed effective date of the agreement and exemptions.

29 Coverage, Amendments, Reciprocity An agreement providing for discontinuance of AEC regulatory authority and the assumption thereof by the state may relate to any one or more of the following categories of materials within the state, as contemplated by Public Law 86-373:

- A Byproduct materials,
- B Source materials,
- C Special nuclear materials in quantities not sufficient to form a critical mass,

but must relate to the whole of such category or categories and not to a part of any category. If less than the three categories are included in any discontinuance of jurisdiction, discontinuance of AEC regulatory authority and the assumption thereof by the state of the others may be accomplished subsequently by an amendment or by a later agreement.

The agreement may incorporate by reference provisions of other documents, including these criteria, and the agreement shall be deemed to incorporate without specific reference the provisions of P L 86-373 and the related provisions of the Atomic Energy Act.

The agreement may provide for the reciprocal recognition of state licenses or permittees and federal licenses in connection with out-of-the-jurisdiction operations by a state or federal licensee.

APPENDIX III
STATE RADIATION CONTROL ACT
SUGGESTED STATE LEGISLATION
PROGRAM FOR 1951

In September of 1959, the Congress enacted what is commonly referred to as the "Federal-State Amendment" (Public Law 86-373) to the Atomic Energy Act of 1954. The purpose of this law is to provide for the gradual assumption by the states of federal regulatory authority in the field of radiation hazards. Until 1959, responsibility for regulation of the atom resided almost exclusively with the federal government. Undoubtedly, the historical basis for this concentration of federal power lay in the initial development of nuclear energy for military purposes. But even when the new world of peacetime development was opened by the Atomic Energy Act of 1954, private exploitation of nuclear energy was regarded as an instrument of national power to be closely supervised by the federal government.

While the federal government exercised virtually exclusive jurisdiction over atomic energy matters following World War II, the states, in the exercise of their responsibility for the protection of the public health and safety, began developing regulatory programs affecting certain sources of ionizing radiation. Presently, the states have the responsibility to regulate health and safety hazards associated with X-ray machines, radioisotopes produced in particle accelerators and naturally occurring radioactive materials not subject to regulation by the United States Atomic Energy Commission such as polonium and radium, and other radioactive ores prior to their removal from their place of deposit in nature. The importance of state activity is evidenced by the fact that even without an enlargement of state jurisdiction, the average individual will receive from sources subject to state control much the greater part of his total radiation exposure.

It would appear that the great majority of states have taken action of some kind to cope with dangers from radiation sources. Almost half require the registration of radiation sources. Seven states have comprehensive radiation protection codes. With respect to atomic energy development, legislation has been adopted by 17 states providing for some kind of co-ordinating mechanism, and 23 states, by legislative or administrative action, have established advisory or study groups.

For its part, the Committee on Suggested State Legislation proposed in the Program of Suggested State Legislation for 1957 that states provide for co-ordination of atomic development. This proposal, with some amendments, was carried again in Suggested State Legislation—Program for 1959. The latter program also contained proposals, in some instances accompanied by draft bills, with respect to radiation protection, shoe-fitting X-rays or fluoroscopes, workmen's compensation laws and radiation coverage, and public liability of state and local licensees for atomic incidents. A supplement to the program for 1959 and the program for 1960 included an analysis of state workmen's compensation

laws and their coverage of workers exposed to radiation hazards, along with suggested legislation to assist states in revising their laws to provide adequate protection.

Congress, recognizing the increasing activity and concern of the states, in the regulating of sources of ionizing radiation, provided in Public Law 86-373 a means by which the states could assume certain regulatory powers. The act authorizes the discontinuance of federal regulatory authority and the assumption thereof by a state with respect to one or more of the following: (1) byproduct materials, (2) source materials, and (3) special nuclear materials in quantities not sufficient to form a critical mass. At the present time, the federal government retains jurisdiction with respect to: (1) the construction and operation of any production or utilization facility, (2) waste disposal at sea, (3) the transfer of possession and control of manufactured items and waste disposal on land if the commission deems licensing necessary, and (4) export from or import into the United States of source, byproduct, special nuclear material or any production or utilization facility.

Other sections provide for co-ordination in the development of radiation standards for the guidance of federal agencies and co-operation with the states, for AEC-state agreements for the performance of inspections or other functions on a co-operative basis, and for the commission to provide training to employees of, and other assistance to, state and local governments as the commission deems appropriate.

The vehicle for accomplishing the jurisdictional transfer is an agreement between the AEC and the governor of the state. In order to enter into such an agreement, Public Law 86-373 requires that the AEC find that the state regulatory program is compatible with that of the federal government and adequate to protect the public health and safety. The two basic elements of an effective state program are (1) a series of rules and regulations insuring the public health and safety and (2) an effective administrative structure for the promulgation and enforcement of such rules and regulations. The details of this program are specifically set forth in criteria developed by the AEC in co-operation with state officials and interested private groups.

The suggested State Radiation Control Act contains a number of alternative administrative arrangements, one of which should meet the needs, legal requirements and organizational pattern of any state. In addition, it provides authority for the governor to enter into an agreement with the federal government permitting the state to assume regulatory authority presently exercised by the AEC. Other provisions include legislative authorization for programs of licensing, inspection and recordkeeping. It should be added that the regulatory authority of the act extends to all sources of ionizing radiation. As such, it includes those sources presently under state jurisdiction as well as those over which, in the future, the federal government might desire to discontinue its regulatory responsibility.

A major purpose of the suggested legislation is to establish an internally consistent regulatory system compatible with that of the federal government and those of other states. The desirability of there being compatibility among the several federal and state regulatory systems is evident. Radiation dosage is cumulative from whatever source

derived, but regulatory jurisdiction in the interests of health and safety with respect to the several sources is divided between the federal government and the states. The defense interest, international ramifications incident to weapons testing and radioactive waste disposal at sea, and regulatory responsibility not subject to federal-state agreement ensure that the federal government will continue to engage in regulatory activities. Only by avoiding conflicting federal and state programs will it be possible to protect the public health and safety, encourage the development of atomic industry, and obtain and retain public confidence.

Recognizing that the primary responsibility for protection of the public health and safety resides in the states and that there is a continuing federal interest in atomic energy, the suggested state legislation and the 1959 federal act clarify federal and state responsibilities and make possible the establishment of programs for federal-state co-operation with respect to control of radiation hazards.

Policy, Purpose and Definitions

Sections 1, 2 and 3 relating to policy, purpose and definitions are largely self-explanatory. The Declaration of Policy states that regulatory standards should be compatible with those of the federal government and that such standards should be in general agreement with those adopted by other states. The purpose section indicates programs to be undertaken to effectuate the policies of the act.

The definitions of source, byproduct and special nuclear materials contained in Section 3 are those adopted and used by the AEC and should be uniform among the states. The definition of ionizing radiation is designed as an exhaustive listing of the types of radiation presently known. The term "sources of ionizing radiation" frequently used in this act is intended to cover all materials emitting ionizing radiation. The state regulatory body may provide for "specific" and "general" licenses as defined in Section 3(c). The "general license" would be effective without pre-evaluation or the filing of an application where danger to public health and safety is negligible. The "specific license" would be issued in all instances where tighter regulation and inspection are necessary.

Administrative Organization

Section 4 provides three alternative forms of administrative organization. The alternatives are designed to facilitate incorporation of an atomic energy regulatory body into the administrative structure of a state. Because of this flexibility, it was necessary to incorporate indefinite references to "agencies or cite appropriate agency" and "appropriate act."

It is extremely important that the proper state agency or agencies be cited when called for. Several factors must be considered in determining which state agency should be so cited. If the State Radiation Control Agency (Section 4, Alternate II) is created, only that agency should be cited since it would be empowered with all the regulatory and licensing authority of the state. If the co-ordinator concept (Section 4, Alternate I) or the Commission on Radiation Protection concept (Section 4, Alternate III) is adopted, existing state agencies such as the Department of Health, the Department of Labor and Industry, and

the Water Pollution Control Board would perform the actual regulatory and licensing functions and therefore should be cited at these points.

It is equally important that the proper appropriate act be cited. The reference here relates to existing authority of state agencies to promulgate rules and regulations and/or procedures authorized therefor.

The co-ordinator approach (Section 4, Alternate I) calls for a single person to co-ordinate both the developmental and regulatory programs of the state and act as the Governor's personal advisor. The functions could be performed by one acting in an independent capacity or by the head of an existing department. The co-ordinator's principal duties would be to review rules and regulations of operating agencies relating to use and control of ionizing radiation and to provide a central clearinghouse for all atomic energy activity in the state. His review of rules and regulations would be to assure their consistency with rules and regulations of other agencies of the state. As noted in Section 4(a) (2), page 11, the co-ordinator may possess developmental as well as regulatory authority. This approach parallels that adopted in co-ordinator proposals made in the 1957 and 1959 Programs of Suggested State Legislation. If the state desires that the co-ordinator function only in a regulatory capacity, the developmental aspect should be omitted.

No rule or regulation would be effective until 90 days after submission to the co-ordinator unless this waiting period is waived. Within this period, the co-ordinator would attempt to resolve any inconsistency, through consultation with the agency involved and the Radiation Advisory Board (Section 5). Under the optional veto provision of Section 4(b) (2) the Governor is empowered to veto a proposed rule or regulation after receiving the advice of the co-ordinator and the State Radiation Advisory Board, or direct that an existing rule or regulation be amended or repealed to achieve consistency. If Section 4(b) (2) is not adopted the proposed rule or regulation automatically would become effective 90 days after transmittal to the co-ordinator.

The clearinghouse function set forth in Sections 4(b) (5) and 4(b) (6) would consolidate at one point within the state all available information pertaining to control of ionizing radiation. It would be possible for an interested party to determine, at a glance, the condition of the licensing and registration program and the nature of all rules and regulations relating to control of ionizing radiation. Section 4(b) (5) provides for studies relating to fallout, background radiation, dangers from nuclear incidents and related civil defense matters. Section 4(c) requires each agency concerned with control or development of atomic energy to provide the co-ordinator with the latest information pertaining to its activities.

The State Radiation Control Agency (Section 4, Alternate II) is an adaptation of a proposal by the National Committee on Radiation Protection and Measurement. The agency could be an independent unit, an existing department or a component of an existing department. Under Section 4(d) the agency would promulgate rules and regulations, establish a licensing system, and develop programs for evaluation of radiation hazards. The agency would be given a clearinghouse function in Section 4(d) (8) to insure that appropriate records are maintained. Rules and regulations promulgated by the agency would be subject to

review by the Radiation Advisory Board if Section 5(b) (5) is adopted. If it is desired that the jurisdiction of the agency included all matters relating to radiological health and safety, the state may wish to consider adopting a proposal to permit the Governor to initiate executive reorganization proposals which would go into effect within a stipulated period of time. Suggested legislation to accomplish this purpose was carried in *Suggested State Legislation—Program for 1957*, page 70.

The Commission on Radiation Protection (Section 4, Alternate III) is similar to the mechanism suggested by the American Public Health Association. Essentially, the commission would be an arm of the Department of Health. Its membership would include representatives of state departments concerned with control of ionizing radiation. Additional members of the commission would be appointed by the Governor.

The commission would have sole authority to formulate and promulgate rules and regulations after holding public hearings (Section 4(f)). It is anticipated that, under this approach, enforcement and licensing would be essentially with the Department of Health. To the extent that the Department of Health or other operating agencies develop policies or programs relating to sources of ionizing radiation, such policies and programs would, under Section 4(g), be reviewed by the commission. If several agencies are so engaged, then provisions should be made for adding the clearinghouse function authorized in Alternates I and II.

Section 5 establishes a radiation advisory board appointed by the Governor. Membership would include representatives from various fields as well as appropriate department heads. If Section 4, Alternate I is adopted the co-ordinator should be a member of the board. The board should be used in combination with Section 4, Alternates I (the co-ordinator) or II (state radiation control agency).

Sections 5(b) (1) and (2) require the board to review and evaluate policies and programs of the State relating to regulation of ionizing radiation; make recommendations to the Governor (also to the state radiation control agency, or co-ordinator, as appropriate); furnish technical advice on matters relating to development, utilization and regulation of sources of ionizing radiation, and make an annual report to the Governor and the Legislature.

In the event the optional veto provision of Section 4, Alternate I (co-ordinator), is adopted, the board's advice pursuant to Section 5(b) (4) could be considered by the Governor in deciding whether or not to reject any proposed rule or regulation.

As an adjunct to the state radiation control agency, the board would, under Section 5(b) (5), review rules and regulations of the Agency to assure consistency with rules and regulations of other agencies of the State. As a further option, the veto provision of Section 5(b) (6) could be adopted under which the Governor could act upon the advice of the board in deciding whether or not he should reject any proposed rule or regulation.

Licensing

Section 6, the licensing provision, is proposed in two alternatives. Alternate I provides for general or specific licensing or registration of sources of ionizing radiation, leaving the details to agency rule or regulation. Alternate II is more elaborate, providing a detailed procedure

for issuance, suspension, modification and revocation of licenses. It is assumed that the matters contained in Section 6(a) of Alternate II would be covered by agency regulations under Alternate I. Whether a state adopts Alternate I or II may well depend upon the attitude of state courts toward the rule-making power of regulatory agencies.

The proposals require licensing of source, special nuclear and by-product materials. Certain radioactive materials which, because of their potential hazards, may require pre-evaluation of the user and the use to which he will put such materials may also be licensed.

For more hazardous materials, specific licensing and pre-evaluation should be required. However, if the material in question or the type of use or user is such as to permit possession and use without prior evaluation, the State may consider a general licensing program wherein no pre-evaluation is made but wherein the source and user are nevertheless subject to state regulations. Similarly, a state may, where appropriate, consider exemptions from licensing requirements or registration of sources. Registration of sources of ionizing radiation is already a requirement in some states.

Both alternatives permit the state regulatory agency to recognize a license granted by another state or the federal government where appropriate. This provision is designed to facilitate those uses of ionizing radiation which require crossing of state lines: for example, a radiographer licensed in one state and looking for a defect in an interstate gas pipeline. In this instance the state might want the radiographer to register with the regulatory agency prior to working in the state, considering formal licensing unnecessary.

Other Provisions

The inspection program authorized by Section 7 is essential if the regulatory program is to have meaning and force. The one limitation on this power is entry to areas under the jurisdiction of the federal government. Such entry and inspection can be made only with the specific concurrence of a responsible federal officer.

Section 8 provides authority for the regulatory agency to require the keeping of necessary records. In addition, the agency is empowered to require that records be kept of exposure for all persons for whom the agency may require personnel monitoring procedures. The latter is essential in view of the cumulative effects of radiation exposure.

Section 9(a) provides authority for the Governor, on behalf of the State, to enter into agreements with the federal government for discontinuance of federal regulatory responsibilities and assumption thereof by the State. Section 9(b) permits an orderly transition from federal to state regulation.

Section 10(a) authorizes inspection agreements with the Federal Government. These agreements would provide for performance of inspections, surveys and other functions on a co-operative basis thereby permitting state personnel to witness the operation of an existing program. Section 10(b) provides requisite authorization for a state agency to establish training programs and to participate in training programs established by the federal government, other states or interstate agencies.

Section 11 requires that all local regulations relating to control of byproduct, source and special nuclear materials be consistent with the provisions of the act and rules and regulations issued thereunder.

Section 12 requires public hearing in connection with any proceeding under the licensing program or to determine compliance with rules and regulations of the agency concerned. The regulating agency is also required to afford a hearing, when requested, on proposed rules and regulations. Section 12(b) grants the power necessary to handle unforeseen situations creating an immediate danger to the public health and safety. It should be noted that Section 12 is merely suggestive as to form. A state may wish to expand this section by providing for notice, an opportunity to be heard, and other due process safeguards, or subject proceedings of the regulatory agency to an existing administrative procedure act.

Sections 13, 14, 15, and 16 authorize several enforcement devices to ensure compliance with the regulatory program of the state. These devices— injunction, seizure, impounding of materials and penalties— provide the necessary flexibility to permit full and complete protection of the public health and safety while providing adequate insurance to licensees that they will be dealt with fairly.

SUGGESTED LEGISLATION

[Title should conform to state requirements.]

(Be it enacted, etc.)

1 Section 1. Declaration of Policy. It is the policy of the
2 State of _____ in furtherance of its responsibility to
3 protect the public health and safety.

4 (1) To institute and maintain a regulatory program for
5 sources of ionizing radiation so as to provide for (a) com-
6 patibility with the standards and regulatory programs of the
7 federal government, (b) [a single,] [an integrated,] effective
8 system of regulation within the State, and (c) a system con-
9 sonant insofar as possible with those of other states, and

10 (2) To institute and maintain a program to permit devel-
11 opment and utilization of sources of ionizing radiation for
12 peaceful purposes consistent with the health and safety of the
13 public.

14 Section 2. Purpose. It is the purpose of this act to effectuate
15 the policies set forth in Section 1 by providing for.

16 (1) A program of effective regulation of sources of ionizing
17 radiation for the protection of the [occupational and] public
18 health and safety;

19 (2) A program to promote an orderly regulatory pattern
20 within the state, among the states and between the federal
21 government and the state and facilitate intergovernmental
22 co-operation with respect to use and regulation of sources of
23 ionizing radiation to the end that duplication of regulation
24 may be minimized,

25 (3) A program to establish procedures for assumption and
26 performance of certain regulatory responsibilities with respect
27 to byproduct, source and special nuclear materials, and

(4) A program to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public

Section 3. Definitions (a) Byproduct material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(b) Ionizing radiation means gamma rays and X-rays; alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light

(c) License—General and Specific

(1) General license means a license effective pursuant to regulations promulgated by the [agencies or cite appropriate agency]¹ without the filing of an application to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially

(2) *Specific license* means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially

(d) *Person* means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto

(e) *Source material* means (1) uranium, thorium, or any other material which the Governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such, or (2) ores containing one or more of the foregoing materials, in such concentration as the Governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material in such concentration to be source material

(f) *Special nuclear material* means (1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Governor declares by order to be special nuclear material after the United States Atomic Energy Commission, or any successor thereto, has determined

¹ The phrase "agencies or cite appropriate agency" appears in brackets throughout this act. The term is generally intended to include the Department of Health, the Department of Labor or any state agency concerned with control of radiation hazards. If Section 4, Alternate II is adopted, the State Radiation Control Agency is the only insertion to be made

- 1 the material to be such, but does not include source material;
- 2 or (2) any material artificially enriched by any of the fore-
- 3 going, but does not include source material
- 4 (g) *Registration* [Insert appropriate definition] ²
- 5 (h) [Additional definitions may be included]

Below are suggested three alternative forms of administrative organization ALTERNATE I provides for a Coordinator of Atomic Development Activities ALTERNATE II sets up a State Radiation Control Agency. ALTERNATE III creates a Commission on Radiation Protection A state may decide to adopt only certain provisions of one or more of the alternatives suggested, integrating them with present administrative arrangements, or to adopt none of the alternatives suggested, preferring to rely upon its present organizational structure. In the latter case, the state may want to examine other provisions of the suggested act to determine if any of the powers contained therein should be granted existing agencies.

ALTERNATE I

- 1 *Section 4 Coordination of State Agencies.* (a) The Gov-
- 2 ernor shall appoint an individual
- 3 (1) to advise the Governor and agencies of the state on
- 4 matters relating to ionizing radiation;
- 5 (2) to coordinate development and regulatory activities of
- 6 the state relating to ionizing radiation, including cooperation
- 7 with other states and the federal government ³ The individual
- 8 so appointed shall have the title of [Coordinator of Atomic
- 9 Development Activities]
- 10 (The [Coordinator] shall be paid a salary of _____dollars
- 11 per annum) ⁴
- 12 (b) The Coordinator shall
- 13 (1) Review [before and] after the holding of any public
- 14 hearing required under the provisions of this act [or cite ap-
- 15 propriate act] ⁵ prior to promulgation, the proposed rules and
- 16 regulations of all agencies of the state relating to use and con-
- 17 trol of ionizing radiation, to assure that such rules and regula-
- 18 tions are consistent with rules and regulations of other agencies
- 19 of the State [Proposed rules and regulations shall not be effec-
- 20 tive until [90] days after submission to the coordinator, unless
- 21 either the Governor or the coordinator waives all or part of
- 22 such [90] day period,] ⁶

² No definition of registration has been included because of differences among the states with respect to the number of qualified persons to administer a registration program, extent of the health and safety problem associated with radiation sources to be registered, and the scope of the registration program that might be desired. Definitions of registration programs of various breadths are available from the United States Public Health Service, Washington 25, D C

³ If a state wishes to confine the duties of the Coordinator to regulation the words "development and" should be deleted from this sentence

⁴ If a state official, such as the head of the Department of Health or Department of Labor and Industry, is appointed Coordinator, this sentence should be omitted. It may be necessary for draftsmen to correlate the language of this subsection with a constitutional requirement that gubernatorial appointees be confirmed by the Senate

⁵ The "appropriate act" referred to is the state Administrative Procedure Act

⁶ The waiting period should run concurrently with any waiting period required by the Administrative Procedure Act or any other state law

(2) When he determines that proposed rules or regulations or parts thereof are inconsistent with rules and regulations of other agencies of the State, consult with the Radiation Advisory Board in an effort to resolve such inconsistency. Upon notification by the board that such inconsistency has not been resolved the Governor may, after consultation with the board, find that the proposed rules and regulations or parts thereof are inconsistent with rules and regulations of other agencies of the State and may issue an order to that effect in which event the proposed rules and regulations or parts thereof shall not become effective. The Governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules and regulations to achieve consistency with the proposed rules and regulations,

(3) Advise, consult, and co-operate with other agencies of the State, the federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of ionizing radiation,

(4) Collect and disseminate information relating to ionizing radiation; and

(5) Based upon current information provided by agencies of the State

(A) Maintain a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations, and

(B) Maintain a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this act [or cite appropriate act]⁷ and any administrative or judicial action pertaining thereto, and

(C) Maintain a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon

(c) The several agencies of the State [and political subdivisions] shall keep the co-ordinator fully and currently informed as to their activities relating to development and regulation of sources of ionizing radiation⁸

ALTERNATE II

Section 3 State Radiation Control Agency (a) [The Department of ----- is hereby designated as the State Radiation Control Agency, hereinafter referred to as the agency] [There is hereby created a State Radiation Control Agency, hereinafter referred to as the agency. The agency shall be an organizational component of the State Department of -----] [There is hereby created an independent State Radiation Control Agency, hereinafter referred to as the agency]

⁷ Cite here state acts requiring registration of sources of ionizing radiation if Section 6 is not the source of such power

⁸ Even if the state decides that the duties of the co-ordinator should be confined to regulation, he should be kept informed concerning agency activities relating to development as well as regulation

1 (b) The [head] of the State Department of ----- shall
2 [designate an individual to] be director of the agency, hereinafter
3 referred to as the director, who shall perform the functions
4 vested in the agency pursuant to the provisions of this
5 act [If an independent state radiation control agency is created,
6 the Governor should appoint the director]

7 (c) In accordance with the laws of the State, the agency
8 may employ, compensate, and prescribe the powers and duties
9 of such individuals as may be necessary to carry out the provisions
10 of this act

11 (d) The agency shall for the protection of the [occupational
12 and] public health and safety

13 (1) Develop programs for evaluation of hazards associated
14 with use of sources of ionizing radiation,

15 (2) Develop programs with due regard for compatibility
16 with federal programs for regulation of byproduct, source, and
17 special nuclear materials,

18 (3) Formulate, adopt, promulgate and repeal codes, rules
19 and regulations, which may provide for licensing, relating to
20 control of sources of ionizing radiation with due regard for
21 compatibility with the regulatory programs of the federal government,
22

23 (4) Issue such orders or modifications thereof as may be
24 necessary in connection with proceedings under Section 6 of
25 this act [or cite appropriate act],⁹

26 (5) Advise, consult, and co-operate with other agencies of
27 the State, federal government, other states and interstate
28 agencies, political subdivisions, and with groups concerned
29 with control of sources of ionizing radiation,

30 (6) Have the authority to accept and administer loans,
31 grants or other funds or gifts, conditional or otherwise, in
32 furtherance of its functions, from the federal government and
33 from other sources, public or private,

34 (7) Encourage, participate in, or conduct studies, investigations,
35 training, research, and demonstrations relating to
36 control of sources of ionizing radiation, and

37 (8) Collect and disseminate information relating to control
38 of sources of ionizing radiation, including.

39 (A) maintenance of a file of all license applications, issuances,
40 denials, amendments, transfers, renewals, modifications,
41 suspensions and revocations.

42 (B) maintenance of a file of registrants possessing sources
43 of ionizing radiation requiring registration under the provisions
44 of this act [or cite appropriate act] and any administrative or
45 judicial action pertaining thereto, and

46 (C) maintenance of a file of all rules and regulations relating
47 to regulation of sources of ionizing radiation, pending
48 or promulgated, and proceedings thereon

⁹ This power is intended for use in conjunction with any licensing authority. The act or acts providing this authority should be cited

ALTERNATE III

1 Section 4 Commission on Radiation Protection. (a)
2 There is hereby created in the [Department of Health] a
3 Commission on Radiation Protection, which shall consist of
4 [the heads of the several agencies of the state having responsi-
5 bility for radiological health and safety] or their designated
6 representatives, and [5] other individuals to be appointed by
7 the governor [with scientific training in one or more of the
8 following fields radiology, medicine, radiation or health
9 physics, or related sciences, with specialization in ionizing
10 radiation, *Provided*, That not more than two persons shall be
11 specialists in any one [of the above named] field[s]]

12 (b) Commissioners appointed by the governor shall be ap-
13 pointed for a term of four years commencing on [insert ap-
14 propriate date] of the year of appointment except that of
15 those first appointed, two shall be appointed for terms of one
16 year, one for a term of two years, one for a term of three years,
17 and one for a term of four years, which terms shall commence
18 on [insert appropriate date] Each commissioner shall hold
19 over after the expiration of his term until his successor has
20 been appointed and has qualified Vacancies shall be filled for
21 the unexpired term in the manner provided for in the original
22 appointment¹⁰

23 (c) When on business of the Commission, Commissioners
24 appointed by the Governor shall be entitled to receive com-
25 pensation at the rate of _____ dollars per diem and shall be
26 reimbursed for actual expenses incurred

27 (d) The [head of the Department of Health] shall be Chair-
28 man of the commission A majority of the commission shall
29 constitute a quorum to transact its business

30 (e) The Commission shall hold at least _____ regular
31 meetings each calendar year, and such special meetings as it
32 deems necessary

33 (f) The commission shall have power to formulate, adopt,
34 promulgate, amend and repeal codes, rules and regulations,
35 as may be necessary for control of sources of ionizing radia-
36 tion; *Provided*, That prior to adoption of any code, rule, reg-
37 ulation or amendment or repeal thereof, the Commission shall
38 publish or otherwise circulate notice of its intended action and
39 afford interested parties an opportunity, at a public hearing,
40 to submit data or views orally or in writing; and *Provided*
41 *further*, That no code, rule, regulation or amendment or repeal
42 thereof shall be effective until _____ days after adoption
43 thereof¹¹

¹⁰ Some states may desire to provide for the appointment of commissioners by another method to assure that terms of commissioners do not all expire at the same time

¹¹ If a state has an Administrative Procedure Act the two proviso clauses should be omitted and in lieu thereof there should be inserted "subject to [appropriate sections of Administrative Procedure Act]"

1 (g) The Commission shall review policies and programs re-
2 lating to control of ionizing radiation and make recommenda-
3 tions thereon to the agencies of the state¹²

4 Section 5 Radiation Advisory Board¹³ (a) There is
5 hereby established a Radiation Advisory Board consisting of
6 ----- members The Governor shall appoint to the board
7 individuals from industry, labor and agriculture as well as in-
8 dividuals with scientific training in one or more of the follow-
9 ing fields radiology, medicine, radiation or health physics, or
10 related sciences, with specialization in ionizing radiation; *Pro-*
11 *vided*, That not more than two individuals shall be specialists
12 in any one [of the above named] field[s] Members of the board
13 shall serve at the discretion of the Governor and shall [receive
14 no salary for services but may be reimbursed for actual ex-
15 penses incurred in connection with attendance at board meet-
16 ings or for authorized business of the board] [, when on busi-
17 ness of the board, be entitled to receive compensation at the
18 rate of ----- dollars per diem and may be reimbursed for
19 actual expenses incurred] The heads of [designated agencies
20 of the State] shall be ex officio members of the board [The Co-
21 ordinator shall be a member and shall be ex officio Secretary
22 of the Board]

23 (b) The board shall:

24 (1) Review and evaluate policies and programs of the State
25 relating to ionizing radiation.

26 (2) Make recommendations to the Governor [and Director]
27 [and Co-ordinator] and furnish such technical advice as may
28 be required on matters relating to development, utilization
29 and regulation of sources of ionizing radiation¹⁴

30 (3) Make an annual report to the Governor [and the Legis-
31 lature]

32 [(4) Render advice to the Co-ordinator [and the Governor]
33 as required by Section 4(b) (2).]¹⁵

34 [(5) Review, after the holding of any public hearing re-
35 quired under the provisions of this act [or cite appropriate
36 act] prior to promulgation, proposed rules and regulations of
37 the State Radiation Control Agency relating to use and con-
38 trol of sources of ionizing radiation to assure that such rules
39 and regulations are consistent with rules and regulations of
40 other agencies of the State Proposed rules and regulations
41 shall not become effective until [90] days after submission to
42 the board unless the board [or the Governor] waives all or any
43 part of such [90] day period]¹⁶

¹² If the commission form is adopted consideration should be given to including in the authority of the department selected for the operation of the regulatory program the responsibility for the clearinghouse function described in Section 4(b) (5) of Alternate I and Section 4(d) (3) of Alternate II

¹³ In the event a state adopts Section 4, Alternate III (Commission on Radiation Protection), the Radiation Advisory Board should prove unnecessary

¹⁴ If a state wishes to confine the duties of the board to regulation, the words "development, utilization and" should be deleted

¹⁵ This section is for use in conjunction with Section 4(b) (2), Alternate I (Coordinator) It provides the board with authority to render advice to the Coordinator with regard to the consistency and compatibility of proposed rules and regulations

¹⁶ This section may be used in conjunction with Section 4, Alternate II It authorizes the board to review rules and regulations prior to promulgation

1 [(6) When the board determines that any proposed rules
 2 or regulations or parts thereof are inconsistent with rules and
 3 regulations of other agencies of the State, the board will so
 4 advise the Governor. The Governor may, after consultation
 5 with the board, find that the proposed rules and regulations
 6 or parts thereof are inconsistent with rules and regulations of
 7 other agencies of the State and may issue an order to that effect
 8 in which event the proposed rules and regulations shall not
 9 become effective. The Governor may, in the alternative, upon a
 10 similar determination direct the appropriate agency or agencies
 11 to amend or repeal existing rules and regulations to achieve
 12 consistency with the proposed rules and regulations.] ¹⁷

ALTERNATE I (SHORT FORM)

1 Section 6 Licensing and Registration of Sources of Ionizing
 2 Radiation.

3 (a) The [agencies or cite appropriate agency] shall provide
 4 by rule or regulation for general or specific licensing of by-
 5 product, source, special nuclear materials, or devices or equip-
 6 ment utilizing such materials. Such rule or regulation shall
 7 provide for amendment, suspension or revocation of licenses.

8 (b) The [agencies or cite appropriate agency] are [is] au-
 9 thorized to [shall] require registration or licensing of other
 10 sources of ionizing radiation.

11 (c) The [agencies or cite appropriate agency] are [is] au-
 12 thorized to exempt certain sources of ionizing radiation or
 13 kinds of uses or users from the licensing or registration re-
 14 quirements set forth in this section when the [agencies or
 15 agency] make[s] a finding that the exemption of such sources
 16 of ionizing radiation or kinds of uses or users will not consti-
 17 tute a significant risk to the health and safety of the public.

18 (d) Rules and regulations promulgated pursuant to this act
 19 [or cite appropriate act] ¹⁸ may provide for recognition of
 20 other state or federal licenses as the [agencies or cite appropri-
 21 ate agency] may deem desirable, subject to such registration
 22 requirements as the [agencies or agency] may prescribe.

ALTERNATE II (LONG FORM)

1 Section 6 Licensing and Registration of Sources of Ioniz-
 2 ing Radiation.

3 (a) The [agencies or cite appropriate agency] shall provide
 4 by rule or regulation for general or specific licensing of by-
 5 product, source, special nuclear materials, or devices or equip-
 6 ment utilizing such materials. Such rule or regulation shall
 7 provide for amendment, suspension or revocation of licenses.
 8 Such rule or regulation shall provide that

9 (1) Each application for a specific license shall be in writ-
 10 ing and shall state such information as the [agencies or

¹⁷ This section provides for the veto by the Governor of rules and regulations where Section 4, Alternate II is adopted. The board could recommend such a veto and the Governor would make the final determination.

¹⁸ Cite state act giving the affected agencies of the state the authority to promulgate rules and regulations.

1 agency] by rule or regulation, may determine to be necessary
2 to decide the technical, insurance and financial qualifications
3 or any other qualification of the applicant as the [agencies or
4 agency] may deem reasonable and necessary to protect the
5 [occupational and] public health and safety. The [agencies or
6 agency] may at any time after the filing of the application,
7 and before the expiration of the license, require further writ-
8 ten statements and may make such inspections as the [agencies
9 or agency] may deem necessary in order to determine whether
10 the license should be granted or denied or whether the license
11 should be modified, suspended or revoked. All applications and
12 statements shall be signed by the applicant or licensee. The
13 [agencies or agency] may require any applications or state-
14 ments to be made under oath or affirmation.

15 (2) Each license shall be in such form and contain such
16 terms and conditions as the [agencies or agency] may by rule
17 or regulation prescribe,

18 (3) No license issued under the authority of this act [or
19 cite appropriate act] and no right to possess or utilize sources
20 of ionizing radiation granted by any license shall be assigned
21 or in any manner disposed of, and

22 (4) The terms and conditions of all licenses shall be subject
23 to amendment, revision, or modification by rules, regulations
24 or orders issued in accordance with the provisions of this act
25 [or cite appropriate act]

26 (b) The agencies or [cite appropriate agency] are [is] au-
27 thorized to [shall] require registration or licensing of other
28 sources of ionizing radiation

29 (c) The [agencies or cite appropriate agency] are [is] au-
30 thorized to exempt certain sources of ionizing radiation or
31 kinds of uses or users from the licensing or registration re-
32 quirements set forth in this section when the [agencies or
33 agency] make[s] a finding that the exemption of such sources
34 of ionizing radiation or kinds of uses or users will not consti-
35 tute a significant risk to the health and safety of the public

36 (d) Rules and regulations promulgated pursuant to this act
37 [or cite appropriate act]¹⁰ may provide for recognition of other
38 state or federal licenses as the [agencies or cite appropriate
39 agency] shall deem desirable, subject to such registration re-
40 quirements as the [agencies or agency] may prescribe

41 Section 7. Inspection. The [agencies or cite appropriate
42 agency] or their duly authorized representatives shall have
43 the power to enter at all reasonable times upon any private or
44 public property for the purpose of determining whether or
45 not there is compliance with or violation of the provisions of
46 this act [or cite appropriate act] and rules and regulations
47 issued thereunder, except that entry into areas under the juris-
48 diction of the federal government shall be effected only with
49 the concurrence of the federal government or its duly design-
50 ated representative

¹⁰ Where this clause appears throughout the remainder of the act, cite act or acts which provide for regulations of sources of ionizing radiation

1 Section 8 Records. (a) The [agencies or cite appropriate
2 agency] shall require each person who possesses or uses a
3 source of ionizing radiation to maintain records relating to its
4 receipt, storage, transfer or disposal and such other records
5 as the [agencies or agency] may require subject to such ex-
6 emptions as may be provided by rules or regulations

7 (b) The [agencies or cite appropriate agency] shall require
8 each person who possesses or uses a source of ionizing radiation
9 to maintain appropriate records showing the radiation expo-
10 sure of all individuals for whom personnel monitoring is re-
11 quired by rules and regulations of the [agencies or agency]
12 Copies of these records and those required to be kept by sub-
13 section (a) of this section shall be submitted to the [agencies
14 or agency] on request Any person possessing or using a source
15 of ionizing radiation shall furnish to each employee for whom
16 personnel monitoring is required a copy of such employee's
17 personal exposure record annually, at any time such employee
18 has received excessive exposure, and upon termination of em-
19 ployment

20 Section 9 Federal-State Agreements (a) The Governor,
21 on behalf of this State, is authorized to enter into agreements
22 with the federal government providing for discontinuance of
23 certain of the federal government's responsibilities with respect
24 to sources of ionizing radiation and the assumption thereof
25 by this State

26 (b) Any person who, on the effective date of an agreement
27 under subsection (a) above, possesses a license issued by the
28 federal government shall be deemed to possess the same pur-
29 suant to a license issued under this act [or cite appropriate
30 act], which shall expire either 90 days after receipt from the
31 [agencies or cite appropriate agency] of a notice of expiration
32 of such license, or on the date of expiration specified in the
33 federal license, whichever is earlier.

34 Section 10 Inspection Agreements and Training Programs

35 (a) The [agencies or cite appropriate agency] are [is] au-
36 thorized to enter into [subject to the approval of the Gover-
37 nor,] an agreement or agreements with the federal government,
38 other states or interstate agencies, whereby this state will per-
39 form on a cooperative basis with the federal government, other
40 states or interstate agencies, inspections or other functions re-
41 lating to control of sources of ionizing radiation

42 (b) The [agencies or cite appropriate agency] may institute
43 training programs for the purpose of qualifying personnel to
44 carry out the provisions of this act [or cite appropriate act],
45 and may make said personnel available for participation in
46 any program or programs of the federal government, other
47 states or interstate agencies in furtherance of the purposes of
48 this act [or cite appropriate act]

49 Section 11 Conflicting Laws Ordinances, resolutions or
50 regulations, now or hereafter in effect, of the governing body
51 of a municipality or county or board of health relating to by-
52 product, source and special nuclear materials shall not be

1 superseded by this act; Provided, That such ordinances or reg-
2 ulations are and continue to be consistent with the provisions
3 of this act, amendments thereto and rules and regulations
4 thereunder.

5 Section 12 Administrative Procedure and Judicial Review.

6 (a) in any proceeding under this act [or cite appropriate
7 act].²⁰

8 (1) for the issuance or modification of rules and regulations
9 relating to control of sources of ionizing radiations; or

10 (2) for granting, suspending, revoking, or amending any
11 license; or

12 (3) for determining compliance with [or granting excep-
13 tions from] rules and regulations of the [agencies or cite
14 appropriate agency], [the agencies or agency] shall afford an
15 opportunity for a hearing on the record upon the request of
16 any person whose interest may be affected by the proceeding,
17 and shall admit any such person as a party to such proceeding

18 (b) Whenever the [agencies or cite appropriate agency]
19 find[s] that an emergency exists requiring immediate action
20 to protect the public health and safety, the [agencies or
21 agency] may, without notice or hearing, issue a regulation or
22 order reciting the existence of such emergency and requiring
23 that such action be taken as is necessary to meet the emer-
24 gency Notwithstanding any provision of this act [or cite
25 appropriate act], such regulation or order shall be effective
26 immediately Any person to whom such regulation or order
27 is directed shall comply therewith immediately, but on applica-
28 tion to the [agencies or agency] shall be afforded a hearing
29 within --- days On the basis of such hearing, the emergency
30 regulation or order shall be continued, modified or revoked
31 within [30] days after such hearing

32 (c) Any final order entered in any proceeding under sub-
33 sections (a) and (b) above shall be subject to judicial review
34 by the [appropriate court] in the manner prescribed in [cite
35 appropriate state act setting out procedure for appeal]

36 Section 13 Injunction Proceedings Whenever, in the judg-
37 ment of the [agencies or cite appropriate agency], any person
38 has engaged in or is about to engage in any acts or practices
39 which constitute or will constitute a violation of any provision
40 of this act [or cite appropriate act], or any rule, regulation or
41 order issued thereunder, [and at the request of the agencies or
42 agency], the Attorney General may make application to the
43 [appropriate court] for an order enjoining such acts or prac-
44 tices, or for an order directing compliance and upon a show-
45 ing by the [agencies or agency], that such person has engaged
46 or is about to engage in any such acts or practices, a permanent
47 or temporary injunction, restraining order, or other order
48 may be granted

49 Section 14 Prohibited Uses It shall be unlawful for any
50 person to use, manufacture, produce, transport, transfer, re-
51 ceive, acquire, own or possess any source of ionizing radiation

²⁰ Cite the state Administrative Procedure Act or separate acts setting forth adminis-
trative procedures for the affected agencies

1 unless licensed by or registered with the [agencies or cite ap-
2 propriate state agency] in accordance with the provisions of
3 this act

4 Section 15 Impounding of Materials The [agencies or cite
5 appropriate agency] shall have the authority in the event of
6 an emergency to impound or order the impounding of sources
7 of ionizing radiation, in the possession of any person who is
8 not equipped to observe or fails to observe the provisions of
9 this act or any rules or regulations issued thereunder

10 Section 16 Penalties Any person who [wilfully] violates
11 any of the provisions of this act [or cite appropriate act] or
12 rules, regulations or orders in effect pursuant thereto of the
13 [agencies or cite appropriate agency] shall upon conviction
14 thereof, be punished by [fine, imprisonment, or both]

15 Section 17 Authorization of Appropriations [Insert ap-
16 propriate section]

17 Section 18 Severability [Insert appropriate section]

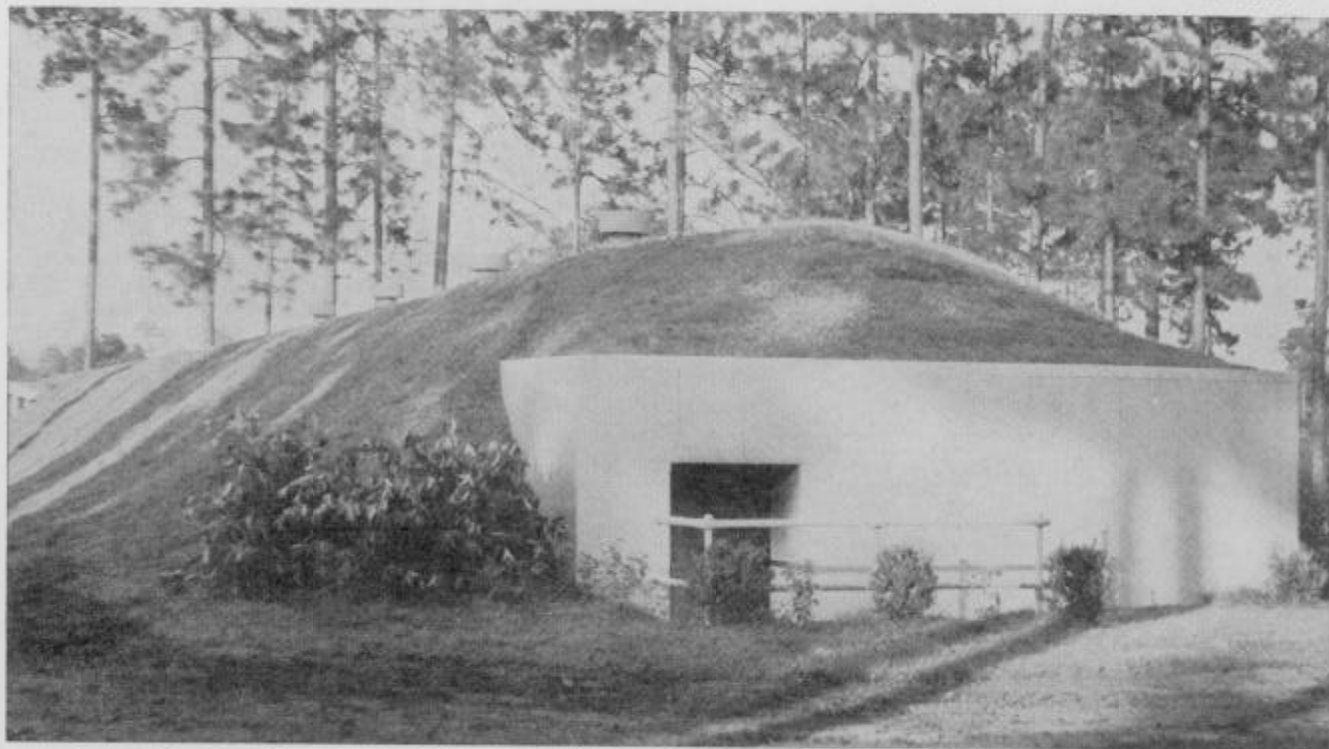
18 Section 19 Repeal [Insert appropriate section]

19 Section 20 Effective Date [The provisions of this act
20 relating to the control of byproduct, source and special nuclear
21 materials shall become effective on the effective date of the
22 agreement between the federal government and this state as
23 provided in Section 9 of this act The provisions of this act
24 relating to the control of other sources of ionizing radiation
25 shall take effect on [insert effective date]]

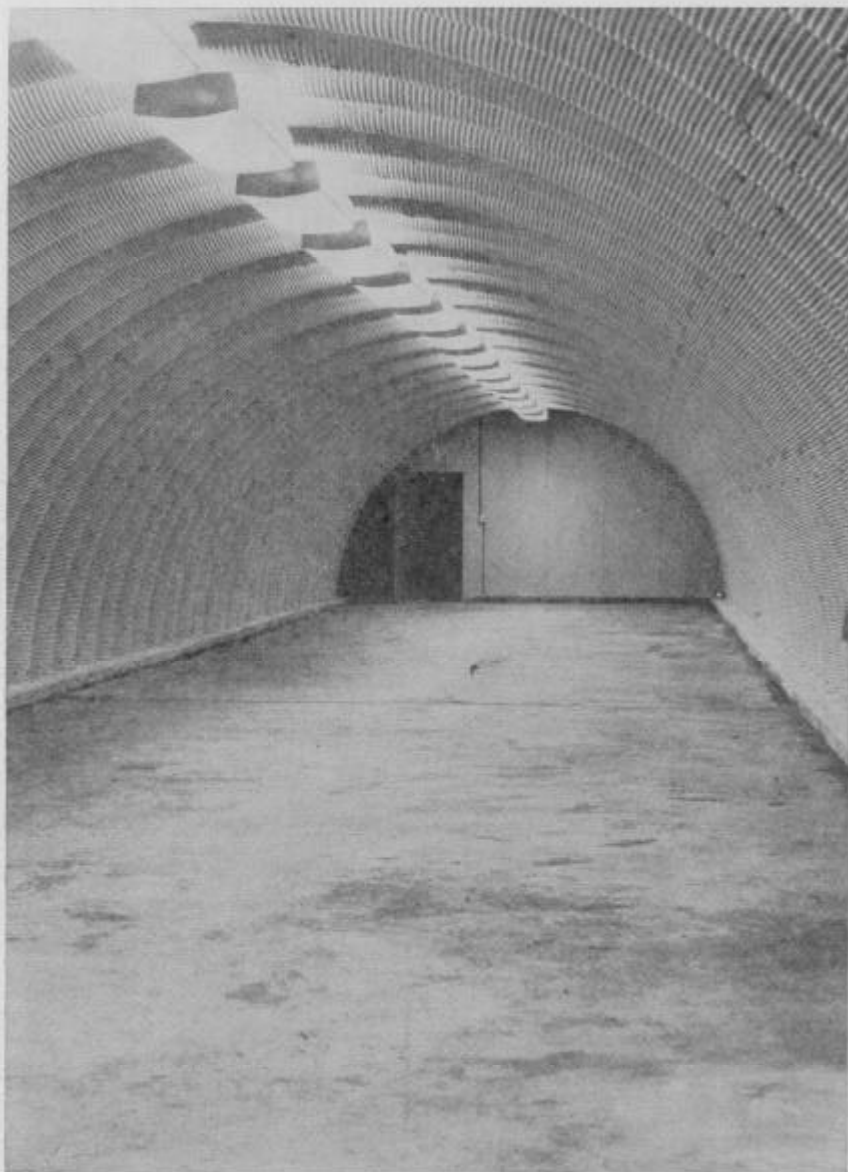
APPENDIX IV

PROTOTYPE FALLOUT SHELTERS

Constructed in selected areas by the Office of Civil and Defense Mobilization as part of the National Shelter Plan.



Exterior view of prototype shelter to be constructed by OCDM in Sacramento, Los Angeles and San Diego Counties.



Interior of the shelter showing a concrete floor and a vinyl coated, corrugated steel arch roof.
The shelter is 20 x 100 feet and can accommodate up to 150 persons.

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ASSEMBLY INTERIM COMMITTEE REPORTS

1959-1961

VOLUME 10

NUMBER 15

Report of the
**ASSEMBLY INTERIM COMMITTEE
ON EDUCATION**

MEMBERS OF THE COMMITTEE

ERNEST R. GEDDES, *Chairman*

CHARLES B. GARRIGUS, *Vice Chairman*

CARLOS BEE

CARL A. BRITSCHGI

GEORGE E. BROWN, JR.

JOHN L. E. COLLIER

LOU A. CUSANOVICH

EDWARD E. ELLIOTT

EDWARD M. GAFFNEY

SAMUEL R. GEDDES

RICHARD T. HANNA

SHERIDAN N. HEGLAND

CARLEY V. PORTER

BRUCE V. REAGAN

HAROLD T. SEDGWICK

JEROME R. WALDIE

GORDON H. WINTON, JR.

January 1961

KEITH SEXTON, *Consultant*

ADELE URBAN, *Secretary*

CLIVE CONDREN, *Legislative Assistant*

Published by the

ASSEMBLY

OF THE STATE OF CALIFORNIA

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Speaker

HON. WILLIAM A. MUNNELL

Majority Floor Leader

HON. CARLOS BEE

Speaker pro Tempore

HON. JOSEPH C. SHELL

Minority Floor Leader

ARTHUR A. OHNIMUS

Chief Clerk

LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, January 2, 1961

HON. RALPH M BROWN
Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber, Sacramento

GENTLEMEN: Pursuant to House Resolution No 326(e), adopted June 18, 1959, the Assembly Interim Committee on Education herewith submits its final report

Respectfully submitted,

ERNEST R GEDDES, Chairman
CHARLES B GARRIGUS, Vice Chairman

CARLOS BEE
CARL A BRITSCHGI
GEORGE E. BROWN, JR
JOHN L. E. COLLIER
LOU A CUSANOVICH
EDWARD E ELLIOTT
EDWARD M GAFFNEY
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BRUCE V REAGAN
HAROLD T SEDGWICK
JEROME R WALDIE
GORDON H. WINTON, JR

GENERAL INTRODUCTION

This report contains the findings and conclusions of six Assembly education subcommittees. The following subcommittees were appointed in June of 1959 and they have carried out the work of the Education Committee during the interim period

Subcommittee on Adult Education

Ernest R. Geddes, Chairman	George E. Brown, Jr.
Carlos Bee	Charles B. Garrigus
Carl A. Britschgi	Bruce V. Reagan

Subcommittee on Higher Education

Richard T. Hanna, Chairman	John L. E. Collier
Harold T. Sedgwick, Vice Chairman	Charles B. Garrigus
Carlos Bee	Ernest R. Geddes
Carl A. Britschgi	Sheridan N. Hegland
George E. Brown, Jr.	Gordon H. Winton, Jr.

Subcommittee on Special Education

Harold T. Sedgwick, Chairman	Edward M. Gaffney
Carl A. Britschgi	Charles B. Garrigus
Lou A. Cusanovich	Jerome R. Waldie

Subcommittee on Teachers' Retirement

Richard T. Hanna, Chairman	Ernest R. Geddes
Edward E. Elliot	Bruce V. Reagan
Edward M. Gaffney	

Subcommittee on Guidance Schools

Carl A. Britschgi, Chairman	Ernest R. Geddes
Lou A. Cusanovich	Samuel R. Geddes
Edward E. Elliot	Carley V. Porter
Charles B. Garrigus	

Subcommittee on County Superintendents

Carlos Bee, Chairman	Bruce V. Reagan
Lou A. Cusanovich	Jerome R. Waldie
Sheridan N. Hegland	

The subcommittee reports were considered and approved by a majority of the members of the Assembly Interim Committee on Education at its final meeting on November 10, 1960, in Santa Barbara. Therefore, the recommendations contained in this report are the recommendations of the majority of the Assembly Interim Committee on Education rather than those of the various subcommittees. The votes on all recommendations were unanimous unless otherwise noted in the report.

The subject matter of several House resolutions, which were referred to this committee did not fall within the studies being conducted by any of the appointed subcommittees. These items received committee staff consideration and study. Reports on these resolutions are included at the end of this report. Of particular interest as a source document is the report on House Resolution No. 76 which directed this committee to study federal aid to education. This report contains the amounts of,

and means by which, California is now obtaining financial assistance for education from the federal government.

On April 4, 1960, the members of this committee, the Legislature, and citizens throughout California were shocked and saddened at the sudden and untimely death of Assemblywoman Dorothy M. Donahoe. Miss Donahoe was appointed chairman of the Assembly Education Committee in January of 1959. From June 1959 she served not only as chairman of the Assembly Interim Committee on Education, but as Chairman of the Subcommittees on Higher Education and Special Education. Her untiring work in the development of the Master Plan for Higher Education during her term as chairman was recognized by naming that act the Donahoe Higher Education Act. Her passing was a tragic loss to the Legislature and, most importantly, to all the children of California for whom she worked so diligently. As a token of this committee's respect and esteem, this report is dedicated to Assemblywoman Dorothy M. Donahoe.

On April 6, 1960, Assemblyman Ernest R. Geddes was appointed to serve as Chairman of the Assembly Interim Committee on Education until January 1, 1961.

At the final meeting of the committee, two resolutions were also unanimously adopted by the members. They are as follows.

"The members of the Assembly Interim Committee on Education wish to express their appreciation and gratification to Assemblyman Ernest R. Geddes for his fair, understanding and untiring service as a member, during all his legislative career, and finally as Chairman of the Assembly Interim Committee on Education."

"For the excellent work they have done during the interim period, the members of the Assembly Interim Committee on Education wish to express their appreciation to the committee staff: Keith Sexton, committee consultant, Adele Urban, committee secretary; Clive Condren, legislative assistant, and Doris Fallon, secretary."

Through many days of hearings and many months of committee staff work, an enormous number of documents have been collected. The findings, conclusions, recommendations, and supporting materials contained in this report are obviously only a brief reflection of all the information and testimony collected. This material, together with verbatim transcripts of all hearings, are on file in the Assembly Education Committee offices in the State Capitol.

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Report of the
SUBCOMMITTEE ON ADULT EDUCATION

MEMBERS OF THE SUBCOMMITTEE

ERNEST R. GEDDES, *Chairman*

CARLOS BEE

CARL A. BRITSCHGI

GEORGE E. BROWN, JR.

CHARLES B. GARRIGUS

BRUCE V. REAGAN

January 1961

FINDINGS

1. Individuals taking classes through the University of California Extension Service are paying approximately \$35 for a three unit course. Elimination of the State's subsidy for administrative costs will result in increased student fees, which will endanger the quality and existence of the Extension Service.

2. The claim that the State College Extension Service is completely self-supporting on the basis of student fees is not substantiated by the facts.

3. Many costs of the State College Extension Service is absorbed in the budgets of the colleges rather than being accounted for separately.

4. The State College Extension has functioned under a decentralized administrative structure. Each state college is responsible for offering and evaluating its own program. Adequate and uniform statewide accounting procedures do not exist. The quality and quantity of extension services varies with each individual state college.

5. Many students enrolled in state college extended day classes are not pursuing degree or certificate objectives.

6. In many areas of the State there is an unfortunate and disturbing competition between the state colleges and the University of California Extension.

7. Adults enrolling in many high school adult education programs are required to pay a registration and/or a student body fee up to 50 cents. Funds derived from these fees are not used to defray the cost of instruction, but rather are often used to purchase or rent property and equipment, operate book stores, pay for speakers, dances, picnics and graduation exercises.

8. Accounting procedures to determine the actual costs of adult education classes are currently inadequate, inaccurate, or nonexistent. No uniform statewide accounting figures are used to compute the costs of adult average daily attendance.

9. The State Department of Education has not used its full influence in discouraging the offering of adult education classes which, while legal, are not of substantial educational value.

10. The State Department of Education has authorized numerous adult education classes for state apportionment which are contrary to the intent of the law. Classes in physical fitness for men are really nothing more than physical education classes, which were prohibited by the Legislature in 1953.

11. Adult education programs have not been notably curtailed or financially unpaired as a result of legislative action in 1959 not to increase state assistance for adult average daily attendance.

12. Many school districts receiving state equalization aid are managing to maintain their adult education classes almost solely with the funds received from the State.

13. Adult education classes in subjects leading to elementary and high school diplomas and classes in apprenticeship training are proving of great value to many California citizens

14. Classes in Americanization and English for the foreign born are of great value to a democratic society.

15. Local school boards have been reluctant to support "avocational" classes with large amounts of local taxpayer's money when state support has either been withdrawn or diminished for these classes

16. Studies show that enrollments in "avocational" classes take a marked decrease when minimal tuition fees are placed on these subjects.

17. Part-time and adult enrollments in the junior colleges exceed the total number of full-time students

18. Junior college extended day programs are not extensions of the day time programs. Junior colleges give college credit for most classes offered in their evening programs, although many of these are, in fact, adult education classes.

19. Junior colleges are permitted to collect out-of-district tuition for adults who are attending "graded" classes. This has proven a highly lucrative source of income for many junior colleges and has enabled some to conduct their evening programs with little or no direct expense to the local taxpayer

20. Regular junior college classes and adult education classes have become so integrated in the extended day programs of most junior colleges that it is impossible to determine which is which

RECOMMENDATIONS

1 State support for the administrative costs of the University of California Extension Service should be 6 percent of the total budget of the Extension Service

2 State support for the administrative costs of the State College Extension should be granted at a sum, not to exceed 6 percent of the total budget of the Extension Service This sum should be granted by the Legislature as soon as, but not until, an accounting system has been developed which will accurately reflect the true costs of the State College Extension.

3 All funds or services used to operate the State College Extension Services should be shown as an expense of the service and should not be included in the regular budgets of the individual state colleges.

4 The State College Trustees should immediately investigate the quantity and quality of the extended day programs of the state colleges. The trustees should also immediately develop policies to divert students in the extended day program who are not pursuing regular degree objectives into the State College Extension

5 The Co-ordinating Council for Higher Education should investigate the degree and amount of competition now existing between the University of California Extension Service and the state colleges The council should, after reviewing this matter, make recommendations to the Legislature in 1963 as to how this competition can be eliminated.

6 The State Board of Education should immediately undertake a study to arrive at an accounting system which will accurately compute the costs of adult education and the costs of a unit of adult average daily attendance on a statewide basis The board should report its findings to the Legislature no later than January 1, 1962

7 The State Department of Education should use its influence to discourage local school districts from continuing or inaugurating adult education classes which are not within the intent of the law

8 No increase in the State's level of support for any adult average daily attendance should be granted

9 High school districts should not, at this time, be allowed to charge out-of-district tuition for adults

10 Governing boards of junior colleges should be allowed to charge tuition fees, not to exceed the cost of instruction, for all adults (persons over 21 years of age and taking less than 10 units) attending the junior colleges

11 Junior colleges should be permitted to charge out-of-district tuition only for those adults who are pursuing programs leading to degrees, vocational certificates, or transfer to institutions of higher education

12 State support for adult average daily attendance in the high schools should be provided solely on the basis of the following.

- a Adults in classes leading to an elementary diploma
- b Adults in classes leading to a high school diploma, provided these classes are an integral part of the daytime high school curriculum.
- c Adults in classes in Americanization or English for the foreign born.
- d Adults in classes in authorized and approved apprenticeship programs
- e Adults in classes for the handicapped or for parents of the handicapped.

13 Adults who already hold high school diplomas should not be included in the adult average daily attendance in categories (a) and (b) of recommendation number 12

14 State support for adult average daily attendance in the junior colleges should be based solely on those adults who are enrolled in classes leading directly to a degree, a certificate of completion for a two-year vocational program, or academic transfer programs

15 Adults who already hold an associate in arts or science degree, an equivalent degree or certificate, or a higher academic degree should not be included in the adult average daily attendance of the junior colleges

REPORT OF SUBCOMMITTEE

INTRODUCTION

During the 1959 Session of the Legislature, proposals were made by the Governor and the State Department of Finance to sharply reduce the State's support for adult education. The Legislature did not wish to enact such a sweeping financial proposal without more facts regarding current adult education programs and without determining what effects the reduction of state assistance would have.

A compromise was reached during the 1959 Session, whereby support for adult education was held at the then existing level of state support, rather than being increased as the State Department of Education proposed or being decreased as the State Department of Finance proposed. The Assembly Interim Committee on Education was directed by the Legislature to conduct an investigation into adult education and to report its findings to the 1961 session of the Legislature. This report is based upon that directive.

Pursuant to this directive, the Subcommittee on Adult Education was established. The subcommittee has held four hearings on this subject: on October 13, 1959, in Sacramento, on December 4, 1959, in Los Angeles; on June 14, 1960, in San Francisco, and on September 27, 1960, in Pasadena.

For the purposes of its study the subcommittee decided to define adult education in its broadest terms to include all part-time education of adults regardless of their educational level. Consequently, the subcommittee has looked into the extension service of the University of California, the extension service and extended day programs of the state colleges, the extended day and adult education programs of the junior colleges, and the adult education programs of the high schools.

In conducting this investigation, the subcommittee has considered the question of state support for adult education programs to be the most important area for study. The subcommittee has searched for answers to the following central questions, which were consistently asked of adult educators, throughout the hearings:

1. As a result of the state funds for adult education not being augmented in the 1959 legislative session, how many adult education programs were curtailed?

2. How many districts increased their local tax rate or budgeted from local funds in greater amounts than previously to sustain the adult education program?

3. To what extent and with what results have fees been charged by local districts?

Other facets of adult education have, of course, been studied by the subcommittee. A considerable amount of testimony has been collected regarding class content, fees, co-ordination of activities, student characteristics, etc. However, these items have been considered subsidiary to the central question of support.

Content of adult education classes and tuition fees would not have received the attention they did if the questions regarding costs and levels of support of adult education classes had been originally answered to the satisfaction of the subcommittee. Investigation of content and other areas became necessary when adult education representatives could not, or would not, provide adequate answers regarding costs. We are pleased, however, that we looked into these other matters because they proved enlightening to the members of this subcommittee and have aided us in preparing more comprehensive, reasonable and justifiable recommendations.

This report will deal with major topics in the following manner: (1) University Extension, State College Extension and the State College Extended Day; (2) Junior College Extended Day and Adult Education; (3) Content of Adult Education Classes; (4) Financial Support of Adult Education Classes; (5) Student Fees; and (6) Summary.

UNIVERSITY EXTENSION, STATE COLLEGE EXTENSION AND STATE COLLEGE EXTENDED DAY

The University of California Extension is one of the two or three oldest extension services in the United States. From a very small beginning in 1891, University Extension has grown to become the largest extension division in the United States.

Enrollments during 1958-59 in University Extension were over 165,000. Approximately two out of three courses carried university credit and 7 out of 10 enrollments were in credit courses. These large enrollments have been attained by the University Extension in spite of high students' fees, which now amount to \$35 for a three unit course.

State College Extension differs sharply from the University Extension in many respects. There is no central administration for the State College Extension. Each college maintains its own extension program within the general framework of policy declarations of the State Board of Education. It is interesting to note that Long Beach State College does not maintain an extension program. Course offerings in State College Extension are quite narrow, usually limited to courses for teachers who live in outlying areas. Many of the great potentialities of the State College Extension have not been developed, possibly because of the loose administrative framework.

Enrollment is very small in comparison with the University Extension, and many times the type of student who is enrolled in the University Extension is, in the state colleges, enrolled in extended day classes where the State pays the greatest part of the cost. For example, in 1958 there were 80,091 students enrolled in the state colleges. Of that number 35,563 were taking less than 12 units, 44,528 were taking 12 or more units. In 1959 the total enrollment in the state colleges was 89,441. Of this number 30,398 were taking less than six units and 59,043 were taking six or more units. In 1959 the State Board of Education enacted a new matriculation policy for state college students. As a result of this action the 1960 enrollment of the state colleges was 90,859. Of this total, 28,792 were taking less than six units (a decrease of 5.3 percent) and 68,067 were taking six or more units (an increase of 15.3 percent).

Considerable controversy has arisen in recent years regarding the State's support of the University and State College Extensions. A subsidy has traditionally been allowed the University Extension for administrative costs. In 1959 this subsidy amounted to 16 percent of the extension's total budget. That same year the Legislature reduced this subsidy to 9 percent, with this amount to be further liquidated in three annual reductions of 3 percent each. One reason for voting this action was the claim that the State College Extension was entirely student supported from the proceeds of an \$8.50 per unit fee.

Sufficient evidence has been collected by this subcommittee to throw grave doubt on the claim of self-sufficiency by the State College Extension. Testimony of state college officials and a study of recent state college budgets show that a definite subsidization exists, in differing forms, on the various campuses. In some colleges, the salary of the Dean of the Extension Service is not charged to the extension budget. Similarly, while extension uses the regular offices of the state colleges for collection of fees, and the handling of transcripts and registration, the charges for these services are included in the regular budget of the state colleges—not in the extension budget.

Because of this "built-in" subsidy for the State College Extension, it seems unwise to continue the original conception of reducing the University Extension to a completely self-supporting basis. University Extension has conducted a high quality program which has attracted a large enrollment. If the state subsidy is removed, the large increase in fees which would be necessary would gravely endanger the continuance of this eminently worthwhile program. We believe the State should provide 6 percent of the total budget of the University Extension for administrative costs.

The Legislature should recognize the existence of a subsidy to the State College Extension and the need for continuing some subsidy to the University Extension. We believe a 6 percent annual subsidy should be voted for the University Extension and the State College Extension. The State College subsidy, however, should not be permitted until an accounting system has been developed by the colleges which will accurately reflect the true costs of the State College Extension. This subcommittee urges the State College Trustees to consider placing the State College Extension under one central administration. The State College Trustees should also immediately develop policies which will divert students in the extended day program who are not pursuing regular degree objectives into the State College Extension.

The Subcommittee on Adult Education deplors the spirit of competition and enmity which has developed between the state colleges and the University Extension in many areas of this State. Co-ordination systems have not proven satisfactorily effective. The subcommittee urges the Co-ordinating Council on Higher Education to explore means of reducing this competition in the best interests of higher education and the State of California.

JUNIOR COLLEGE EXTENDED DAY AND ADULT EDUCATION

This subcommittee has devoted a great deal of attention to junior college extended day programs. Junior college representatives have told us that their evening programs, with the exception of adult edu-

education classes, are merely extensions of their day programs. They claim they are simply "running their plant from 8 in the morning to 10 at night." If this is the case, then we are somewhat concerned over the type of education which the daytime junior college student is receiving.

During 1959-60 there were 221,540 part-time and adult students (persons over 21 years of age and taking less than 10 units of college work) enrolled in the junior colleges. There were only 90,254 full-time students in the junior colleges in 1958-59. We have always considered the junior colleges as institutions which provide the first two years of collegiate education or two-year vocational programs. We had not realized that the junior colleges were involved in mass adult education programs.

Our studies and investigations into the junior college extended day programs reveal that these are not merely extensions of the day programs. In most junior colleges, for example, there is even a separate administrative officer for the evening program. He is generally a person with a great deal of past experience in adult education programs. Two of the junior colleges' functions are general education and adult education. The majority of courses designed to fulfill these functions are given in the evening.

One high school and junior college district in Southern California provides a revealing insight into the extended day operations of junior colleges elsewhere. Within this district there is an evening high school program, a junior college extended day program, and an evening junior college program. The evening high school program offers courses which parallel those of the day high school and lead directly to a high school diploma. The junior college extended day program follows the same pattern and offers only those classes that parallel the day classes and lead to an A. A. degree. The evening junior college, however, presents quite a different picture. The catalog of the school states that its purposes are as follows:

"Evening junior college courses are specifically designed to meet the needs of adults whose primary interest in education is self-improvement without too much concern for a degree. Credit earned for the evening college work may be applied toward the elective requirements of the associate in arts degree. Classes are held on the . . . junior college campus and on the campuses of . . . union high school and . . . high school, and a few meet in convenient locations. . . . Evening junior college classes may also be used to satisfy the elective requirement for the high school diploma."

A random sampling of classes offered in the evening junior college are as follows: home landscape design, beginning typing, investment securities, managing the family income, vocational catering and pastries, china painting, floral design, the one-parent family, etc. To make it even more confusing many of the classes offered by the evening junior college are offered during the daytime. In almost all cases these classes are given for college credit—they are, if one can believe it, not adult education classes!

Most junior colleges do not separate their programs as neatly as this particular district has done. However, in many junior colleges throughout the State you would find the same types of classes being

offered in the evening Regular junior college classes and adult education classes are merely lumped together and called "extended day." Since almost all classes in junior colleges are given for college credit it is impossible to determine which classes are for adults and which classes are part of the regular program

Many junior college representatives have told us that it does not make any difference whether adults are in graded or nongraded classes because they receive only basic aid for an adult anyway. Even if we were to accept this theory that an educational institution can be "all things to all people," we would still not be entirely correct. The matter of out-of-district tuition becomes highly significant.

In 1953, the Legislature prohibited high school districts from charging out-of-district tuition. Since some adult education programs had been "raiding" their neighboring districts for students and then charging these districts the costs of educating their adults the Education Code was changed. The net effect of the legislative action was to greatly reduce the number of classes in many evening high school programs.

When making this change, however, the Legislature did not make this section applicable to graded classes. Junior colleges were able, by simply changing their adult education classes to graded classes, to continue collecting out-of-district tuition, plus a \$300 fee per a d a. for capital outlay purposes. In addition, the junior colleges were able to absorb a great deal of the adult education programs formerly conducted by the high schools who could no longer financially support them. As the high school programs in adult education diminished the junior college extended day programs flourished.

Shown below are two tables which graphically illustrate that junior colleges, while their enrollments over the past few years have almost doubled, have added few adult education classes and that the majority of their adults are in graded classes.

NUMBER OF ADULT CLASSES APPROVED IN JUNIOR COLLEGES OTHER THAN
THOSE OPERATING SEPARATE EVENING SCHOOLS

Year	<i>Junior colleges with classes for adults</i>	<i>Number of classes</i>	<i>Junior colleges reporting no classes for adults</i>
1952-53	23	2,121	--
1953-54	35	3,497	--
1954-55	37	3,599	2
1955-56	33	3,428	8
1956-57	35	3,809	10
1957-58	39	3,746	11
1958-59	39	4,885	13

AVERAGE DAILY ATTENDANCE OF ADULTS IN JUNIOR COLLEGE CLASSES

Year	<i>Graded classes a d a</i>	<i>Percent</i>	<i>Classes for adults a d a</i>	<i>Percent</i>	<i>Total a d a. (100%)</i>
1953-54	7,295	40.8	10,619	59.2	17,914
1954-55	11,562	51.8	10,791	48.2	22,353
1955-56	15,406	61.7	9,575	38.3	24,981
1956-57	19,431	66.0	9,996	34.0	29,427
1957-58	22,766	69.5	9,977	30.5	32,743
1958-59	25,251	71.6	9,992	28.4	35,243

The net effect of this has been even worse on the local taxpayers than previously. Out-of-district tuition is charged on the basis of the cost per unit of a d a. less the amount derived from state and federal funds. The cost of education in a junior college is always more expensive than in a high school, although the amount of money received from the State is not necessarily any greater. Consequently, many districts have found themselves paying more for the education of their adults in the junior colleges than they did for those same adults in the high school adult education programs.

Through the use of out-of-district tuition it has been possible for some junior colleges to pay for their entire extended day programs without any cost to the local district. In some cases they have even been able to make money which has then been put into other programs within the junior college.

This subcommittee is also very much aware there are many Californians who are taking advantage of the junior college evening programs in order to pursue work leading to a two-year degree or transfer to an institution of higher education. This is highly commendable and we do not want to do anything which would discourage this type of opportunity, but at the same time we do not wish to maintain noncollegiate classes or adult education classes in the guise of collegiate caliber programs. If a class is a class for adults it should be called such and reported to the State as such. Most junior colleges have no matriculation policies and adults attending less than six hours need not even file records in the college registrar's office. Adults who already have A.A. or even Ph.D. degrees may enroll for a specific class in a junior college without any difficulty. His educational goal need only be that he wants to take one particular class.

Whether adults should have the right to attend evening classes in the junior college, or the high schools for that matter, only for the purpose of taking one or two classes for his own self-improvement or for upgrading on his job without contributing anything to the cost of that education is a matter of great concern. It is a matter which should be decided by local governing boards. At the present time local governing boards are restricted from charging fees of students in graded classes. We feel the Education Code should be amended to allow local governing boards to charge tuition fees, not to exceed the cost of instruction, for all adults in junior colleges.

This subcommittee also recommends that junior colleges be granted State assistance for adult a d a based solely on those adults who are enrolled in classes leading directly to a degree, a certificate of completion for a two-year vocational program, or academic transfer programs. Individuals who already hold an associate in arts or science degree, an equivalent degree or certificate, or a higher academic degree should not be included in the adult a d a for state apportionment purposes. Once this plan is adopted, we feel the State should support this adult a d a on the same basis as the regular a d a apportionment.

If junior college districts wish to operate other programs which do not lead to a two-year degree or certificate they are free to do so. They may wish to make the financing of these classes a partnership arrangement between the participant and the district. Our feeling is that other

classes which are not part of a planned academic or vocational program, while worthwhile, should not be a responsibility of the State. The junior colleges refer to themselves as community colleges. They do so because in each community the requests for certain types of classes or programs will vary from another community. Obviously these programs or classes are designed to benefit the community or the participant or both and they should be financially supported by the community, the individual, or both.

CONTENT OF ADULT EDUCATION CLASSES

Content of adult education classes became an important element of this investigation only when the subcommittee did not receive satisfactory answers to questions about financing of adult education classes and the purposes for which adults enroll in these classes. When it became apparent that state funds were being used to almost wholly support classes in some districts, we felt it was essential that we determine for what this money was being expended.

Evidence presented to this subcommittee shows that the great bulk of adult education classes are worthy of state support. Courses leading to high school and elementary school diplomas are providing our citizens with basic educational background that is essential in the highly complex society which we have created in the United States. Classes in apprenticeship training are providing a valuable service to the State which has been highly praised by business and labor leaders. Classes in Americanization and English for the foreign born are of immense value to our society. The Legislature has recognized this element is so important that they have prohibited the levying of fees for this instruction. The subcommittee agrees wholeheartedly with the present policy in this regard.

This subcommittee has severe doubts and reservations, however, about other areas of adult education programs which are best described as "avocational." Classes in the following subjects are being offered throughout the State at local and state taxpayers' expense: cake decorating, lampshade making, rug making, upholstery, ceramics, jewelry making, lapidary, leathercraft, piano playing, modern dance techniques, sewing, physical fitness for men and women, knitting, millinery, tailoring, woodshop, trailer camping, flower arrangement, conversation, and small boat handling. This list is by no means exhaustive, it is merely a partial listing.

In one large Northern California city this subcommittee found there were long waiting lists of individuals who desired to enter classes which would lead them to the attainment of high school diplomas. At the same time this district was offering upholstery, millinery and other "avocational" classes which barely had enough students in attendance to maintain a minimum enrollment. How high school district administrators can justify that upholstery and flower arranging are more important than basic mathematics and English this subcommittee cannot comprehend.

A representative of the Adult Educator's Association challenged this subcommittee to prohibit "avocational" classes if it thought these courses should not be given. This subcommittee does not feel it should tell local school districts what they may or may not offer. Local govern-

ing boards are in a far better position to do this than a legislative committee. This subcommittee, however, does feel that it must determine what classes are essential and worthy enough to receive funds from taxpayers throughout the State.

As the section of this report on state support will indicate, this subcommittee feels that classes of an "avocational" nature or classes that are not of a substantial educational value and are not part of the regular school system should not be supported by state funds. Local districts may continue to support these classes if, in the opinion of the local boards, they meet the needs of their local communities.

Experience has shown, however, that local boards are often reluctant to maintain such classes when they must appropriate large sums of local taxpayers' money to support them. The idea that "we will offer them as long as the State pays for them" has existed too long in California. Adult education administrators who can tell their local boards that it isn't costing the district anything to offer such classes can usually get the board's approval.

We have noted, however, that in Los Angeles and San Francisco (which receive only basic aid from the State) it has been harder to sell these boards on nonessential classes. Generally, these two districts maintain programs of high quality at a minimum of expense. Districts receiving equalization aid from the State, however, seem to be more willing to support anything from "Fun with Frosting" to "Trailer Camping in the U S A." It becomes evident that Los Angeles and San Francisco have made basic decisions regarding educational priorities and values—and have chosen education rather than "avocation." It is also interesting to note that both of these districts have placed tuition fees on their "avocational" classes so that local taxpayers' funds do not have to be used so abundantly to support them. It is amazing how quickly the number of students decreases when they are required to pay a \$2 or \$3 fee for lampshade making or landscape design, which says something about the way adults themselves view the educational benefits of these classes.

The State is now experiencing difficulty in financing essential programs for the children, youth, and adults of California. In such times, state support for classes teaching adults to decorate cakes, arrange flowers, build high fidelity sound systems, and braid rugs is considered a disgraceful luxury, which is not defensible and which deserves to be stopped immediately in the best interests of the children and the taxpayers of this State.

FINANCIAL SUPPORT OF ADULT EDUCATION CLASSES

In discussing the question of financial support, this subcommittee has investigated the need, if any, for increased state support of adult education classes. After having heard all who wished to speak on this subject and after having given the adult education administrators every opportunity to establish a convincing argument on this question, the subcommittee finds no justification to recommend an increase in state aid.

No evidence of a convincing nature has been presented to the subcommittee which would suggest that an increase is necessary. This subcommittee has been repeatedly warned that great damage will result if state aid is not increased. Witnesses have been unable, however,

to provide anything more than this glittering generality. Requests for specific evidence and details have been answered only by vague references.

It is not this subcommittee's task to establish reasons for increasing adult education apportionments if those administering these programs cannot do so. While a convincing argument for an increase has not been advanced, a preponderance of evidence indicates that state aid should, in many cases, be eliminated.

A questionnaire prepared by the committee staff was sent to numerous schools during the course of this investigation. Each school district was asked whether the failure to increase state aid for adult education had caused a curtailment of the district's programs. Responses from districts receiving equalization aid indicated overwhelmingly that the decision of the Legislature had had absolutely no effect on their programs. Since basic aid was not increased, those districts receiving only basic aid were not affected and reported that there had been no change.

Another, and far more important, reason for not increasing support for adult education has also come to light during the course of this investigation. Information was requested from school districts regarding their total cost per unit of adult education. The districts supplied figures which differed so greatly that the subcommittee immediately became disturbed by the apparent absence of proper accounting for funds apportioned to the districts for adult education purposes. One district stated that their total cost per unit of adult education was \$177. This was virtually the amount supplied by the State because the district was on equalization. Several other districts quoted costs in the \$380-\$400 range, and three districts quoted costs of over \$400 per unit of adult education.

Expenses charged against adult education vary widely from district to district. Some districts charge as much as one-third of their total administrative costs to the adult education program. Percentages of bond redemption, utilities, insurance, repairs, maintenance, and travel costs are charged against adult education programs.

Adult education administrators have informed the subcommittee that this problem has disturbed them for several years and that an attempt is now being made to provide a more systematic approach to the computation of adult education expenses. This subcommittee is wholly in accord with a study to clarify the accounting procedures used to determine the costs of adult education. We feel it is long overdue!

The Legislature should direct the State Board of Education to conduct such a study and to report the results of their findings and their recommendations to the 1962 Session of the Legislature. This is an important question involving large sums of taxpayers' money and should be given close and immediate attention. Once the exact cost of a unit of adult education is determined, apportionments should be made on this basis with reference to equalization aid. The fact that state funds are being used to pay for 80-100 percent of the costs of adult education programs in equalization districts is a prostitution of the equalization aid concept. It should be stopped immediately!

Many classes offered in adult education programs throughout the State are of a questionable educational value. These same courses cannot, in the opinion of the subcommittee, be justified as being worthy

of state support when tax money for the support of elementary and high school students is so scarce. Rather than increase state support for adult education, and particularly for these "avocational" classes, the subcommittee has developed recommendations which will assure continued support for those students who are pursuing degree or vocational objectives in a planned curricula. The subcommittee has left to the local districts the determination of whether other classes and programs should be offered at public expense.

Because our goal is to support courses which are an integral part of academic and vocational curricula, this subcommittee urges the State Department of Education to enforce not only the letter of this proposed legislation, but also the intent and spirit of it. Many classes of little educational value, which have been brought to the attention of this subcommittee, have been approved for apportionment purposes by the Bureau of Adult Education in the State Department of Education.

For example, in 1953 the Legislature specifically prohibited the use of any state funds for physical education classes for adults. To our knowledge no adult physical education classes are receiving state support. Yet, classes abound throughout the State today in physical fitness for men and physical fitness for women. The course outlines of many of these classes indicate that "group athletic activities will be included." While we realize these courses have not been legally prohibited from receiving state aid, we feel the department has not used its prestige and influence to enforce the intent of the Legislature. We hope that the department will do so more effectively in the future.

The request has been made that high school districts should be allowed to collect the cost of educating out-of-district adults from the districts of their residence. In 1953, the Legislature abolished the authority of high school districts to collect out-of-district tuition because some schools were "raiding" the territory of their neighbors for financial gain.

Abuses of this provision caused its removal and we find no safeguards that would prevent these past abuses from recurring. Further, it is not proper to allow districts to charge out-of-district tuition until an accurate accounting procedure has been established. Tuition charges should not be collected from nondistrict taxpayers when the actual cost of classes is not known.

The improvement of accounting procedures and the adoption of the recommendations of this report regarding state support for adult education would produce adult education programs which the Legislature would be anxious to support. If these reforms are adopted by the Legislature and instituted in local districts, we would favor granting adult a d a. on the same level of support as the State provides for regular a d a. because then the Legislature and the citizens of this State would be assured that adult education would be truly educational and not just a gathering place for "do-it-yourself" enthusiasts.

STUDENT FEES

Testimony of adult administrators has shown a great body of opposition to student fees of any sort. Tuition fees, even when nominal, are attacked as "closing the door" to public education and preventing "less financially endowed" people from taking advantage of adult

education classes. It is curious, when one considers the public statements regarding fees, that some of the State's high school districts charge a student body or "registration" fee.

Education Code Section 6365 permits the governing board of a school district to "establish regulations providing for the collection of an incidental fee from each pupil enrolled in such classes for adults as the governing board may determine. The fee collected from each pupil shall not exceed fifty cents (\$0.50) in any school year. All fees shall be deposited in the account for that school and shall be expended only for: (1) materials, services, or supplies for the operation of classes for adults in such school; and (2) activities of particular benefit to pupils in classes for adults in such school."

In one large Northern California district, a registration fee is charged. The fee is not actually a registration fee because the money goes to the adult education department and not to the district. A fund derived from this fee is administered by the student body senate and used for several purposes, including the purchase of equipment for the adult department.

Similar situations have been found in many other districts where items such as brochures advertising the adult department are printed with student body funds. In one district in Southern California, the subcommittee found a particularly unique arrangement. A student body fee is charged and the funds collected are administered by a governing board of nine members, five of whom are administrators of the district. The building housing the adult education office and several of the adult classrooms is owned by the student body and is rented to the district by the governing board. With its majority of administrators, the board presents a picture of the district negotiating with the district for the use of property and facilities.

This subcommittee sees little justice in charging a "registration" fee unless it is actually used to cover the costs of registration. If there are other legitimate expenses for printing, equipment, services, and the cost of instruction, then a regular tuition fee should be charged. Further, the subcommittee deplores arrangements whereby student body associations own buildings which are rented to the district. The Legislature should eliminate those situations where district administrators are, in effect, negotiating with themselves for buildings, property or services.

SUMMARY

During the four hearings this subcommittee has held and during the writing of this report we have tried to consistently look at the problem of financing the education of adults on all levels and on a statewide basis. This subcommittee strongly believes that every individual should have the opportunity to attain his fullest educational potential. Individuals who must attend school on a part-time basis or who are forced to withdraw from school and return at a later time should not be penalized from attaining their planned educational goals.

California has generously provided opportunities for its citizens to pursue education from kindergarten through doctoral degrees in publicly supported institutions. Access to this type of education should be maintained on the present basis.

However, we have also been faced with a basic philosophical question: "What is the State's responsibility for adults attending classes at random without planned educational goals, or without progressing from one educational level to another?" "Should adults returning to school solely for reasons of self-improvement or upgrading on their jobs be supported on the same level as adults working toward diplomas and degrees?" These are questions which have been before the Legislature many times. They cannot be answered to the satisfaction of all concerned. They are questions which should not be made solely by the State. Local governing boards of high schools and junior colleges and state governing boards of the state colleges and the university should also be involved in making these decisions.

This subcommittee recommends that state support be provided for the education of all adults who are pursuing work toward elementary and high school diplomas, vocational-technical certificates, apprenticeship certificates, A A , B A , M A , and Ph D. degrees.

The State of California has a limited amount of funds to disburse to all elements of education. It has always been the State's policy that children and youth should have first priority on the available funds because they represent the next generation that will take over the duties and responsibilities of society. This is the only practical and realistic approach which the State can take and it is one which we heartily endorse. Adults who are returning to school to pursue planned educational goals should be supported by the State as well. There is also little doubt that the school age population will continue to grow. The numbers of students in all levels of education in California will each year break previous years' records and will continue to place an even greater burden upon the State's financial resources. Therefore, it is essential to establish some priority system as to where the limited amount of state funds could and should be most effectively applied.

We feel that no state money should be spent for any adult, no matter at what educational level, if he is not pursuing work toward a certificate, diploma, degree, or classes in Americanization and English for the foreign born. We do not wish to indicate that those other programs and classes designed to benefit the community or the participants are not worthwhile. However, we feel that since the major benefits of these classes are for the community or the participants that the local community should determine whether to offer these programs. Local governing boards are often times in a better position to make this decision than is a legislative committee or the State Department of Education. Whether local districts wish to financially support these programs or whether they wish to work out a partnership arrangement for financing these classes with the students involved is a matter for them to determine.

By making the recommendations contained in this report we have in no way injured the right of any individual to pursue his education as long as he is working in a planned manner toward true educational goals. The State recognizes its responsibility to these individuals and will support them as much as it will support the regular full-time student.

REPORT OF THE
SUBCOMMITTEE ON HIGHER EDUCATION

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January 1961

FINDINGS

1 Junior colleges are currently receiving approximately 28-32 percent of their current operating expenses from the State. Only 18 percent of this amount is apportioned as equalization aid, 82 percent is apportioned as basic aid.

2 The State's percentage of support for the operating expenses of the junior colleges has been progressively declining over the last six years.

3 As a result of the master plan for higher education, the governing boards of the University of California and the state colleges have agreed to divert to the junior colleges by 1975, approximately 50,000 students who would have originally attended the university or the state colleges.

4 Junior colleges are permitted to charge out-of-district tuition and capital outlay fees for students not residing in their districts. This has proven a highly lucrative source of income for many junior colleges.

5 Junior colleges have never received any state assistance for capital outlay costs. Junior colleges have been constructed through local district taxation.

6. Junior college districts are allowed to levy a maximum tax of 35 cents against every \$100 of assessed valuation for the operating expenses of the college, high school districts maintaining junior colleges may levy a maximum tax of \$1.10; unified districts maintaining junior colleges may levy a maximum tax of \$2. These tax rates were established in 1937.

7 Most unified and high school districts maintaining junior colleges are levying the statutory maximum tax, which includes the additional 35-cent tax they are permitted to levy because of maintaining a junior college. Most of these school districts are not spending nearly the amount derived from this 35-cent tax on their junior college. These districts are utilizing tax money allegedly collected for junior college purposes to support elementary and high school programs.

8 Most unified and high school districts maintaining junior colleges do not maintain separate accounts nor bookkeeping procedures for their junior colleges. These districts maintain that they are, therefore, unable to provide the actual costs of education for any individual level of education within their system.

9 The present foundation program used for computing state apportionments to the junior colleges is \$494 per unit of average daily attendance.

10 The statewide average cost per student in the junior colleges in 1958-59 was \$521.

11 There is a great disparity between the tax efforts of districts maintaining junior colleges and districts not maintaining junior colleges.

12 Junior college districts have recently been formed which do not have tax bases sufficient to provide quality educational programs without receiving equalization and from the State

13 Students are presently admitted to junior colleges who hold a high school diploma or who are over 18 years of age and who, in the judgment of the principal of the college, can benefit from the instruction.

14. The likelihood for success of students entering junior colleges without a high school diploma is very small. Therefore, some junior colleges place an entering student, who does not have a high school diploma on immediate probation

15. Some junior colleges allow students making a D or F average to remain in the college for as many as three semesters.

16 Junior college students transferring to the university or state colleges, who were eligible to enter those institutions upon graduation from high school, perform as well as, or in some cases better than, students who enrolled in those institutions as freshmen

17. Junior colleges maintain well-staffed counseling and guidance services which are an essential part of the junior college function.

18 Many junior colleges offer what is known as general education. Classes in this category sometimes lead to an associate in arts or an associate in science degree. Many classes under the category of general education are not of a collegiate nature nor of substantial educational value.

19 In 1959-60 there were 90,254 full-time students in the junior colleges and 221,540 part-time and adult students. Enrollment figures show that the majority of junior college students are over 21 years of age, take less than 10 units of college work and generally attend classes at night.

20 Most of the adults attending junior colleges are not enrolled in adult education classes. They are enrolled in graded or credit classes, although the majority of these adults are not working toward degrees or certificates

21 Adult education classes and adult enrollments in the junior colleges have become so confused and integrated with the regular evening program that it is impossible to determine which are adult education classes and which are regular junior college classes

RECOMMENDATIONS

1. The establishment of a state, interest-free, loan fund for junior college capital outlay purposes is not financially practical at this time.

2. No realistic or effective proposals to provide capital outlay funds to the junior colleges have been presented to this subcommittee. Therefore, we are not able to make a positive, reasonable, or justifiable recommendation regarding this matter at this time.

3. An accurate system of accounting for the exact cost of operations and the exact amounts of revenue received which are attributable to junior colleges in unified and high school districts, should be devised by the State Department of Education immediately. These costs and income figures should be submitted annually to the State Department of Education and the office of the Legislative Analyst. Until an adequate accounting system has been established no additional state money should be provided to any such district maintaining a junior college.

4. Any additional support provided to the junior colleges should be apportioned on the basis of equalization aid. No flat grant increase should be made.*

5. In order to qualify for increased state assistance, local districts should be levying and spending a minimum tax of 30 cents for junior college operating expenses.

6. Since the present foundation program used in computing state apportionments to the junior colleges is unrealistic it should be increased from the present \$494 per average daily attendance to a minimum of \$525 per average daily attendance*.

7. All territory of the State not now included within districts operating junior colleges should be brought into junior college districts as rapidly as possible. No new district should be formed, however, unless adequate tax bases exist.

8. The State Board of Education should re-evaluate its criteria for the establishment of new junior college districts to provide them with larger tax bases so that the junior college may be financially feasible.

9. Local junior college governing boards should have the authority to determine whether students who do not have high school diplomas should be admitted to their institutions or not. Education Code Section 5706 should be changed accordingly.

10. If local governing boards of junior colleges decide to admit students who do not have high school diplomas, those individuals should be placed on immediate probation and given one semester to maintain a minimum of a C average.†

Votes of the Assembly Education Committee on the above recommendations were unanimous with the following exceptions:

* Assemblyman Collier abstained on No. 4 and No. 6.

† Assemblyman Britschgi voted no on No. 10.

11. Counseling and guidance services of the junior colleges are important functions of these institutions and they should be provided.

12 The requirements for an Associate in Arts or an Associate in Science degree should be strengthened All courses in general education should be thoroughly reviewed by the State Department of Education and all classes not of a substantial educational value should be eliminated immediately

13 No additional state assistance to the junior colleges should be apportioned for adult average daily attendance

14 Increased state support should be granted to the junior colleges under the provisions outlined in the recommendations above

REPORT OF SUBCOMMITTEE

INTRODUCTION

The Subcommittee on Higher Education was established to conduct a thorough survey of the junior colleges. This is the first time such a study has been done by the Legislature in many years. The subcommittee was chaired by Assemblywoman Dorothy M. Donahoe until her death in April of 1960. Assemblyman Richard T. Hanna was appointed to succeed her as chairman in May of 1960 and he has served in that capacity to this date.

On September 24-25, 1959 the subcommittee met in Los Angeles for its first hearing which dealt with the needs, programs, operations, goals and desires of the junior colleges. During the 1960 session of the Legislature a master plan for higher education was introduced and most of its provisions were enacted into law. One major provision not adopted, however, would have increased the State's financial assistance to the junior colleges for operating expenses and provided, for the first time, funds for capital outlay expenditures. Because these provisions were not enacted into law, House Resolution No. 22 was passed. It directed the Assembly Interim Committee on Education to prepare a plan for increasing state assistance to the junior colleges, if the committee found sufficient justification and need.

Following this directive, the subcommittee held two hearings on junior college financing. On June 13, 1960 the subcommittee held a hearing at the College of San Mateo and on September 26, 1960 at Fullerton Junior College.

During the four days of interim hearings, this subcommittee heard from 53 witnesses representing teachers, administrators, board members, businessmen, financial experts, the Department of Education, the Department of Finance, the Legislative Analyst, and numerous educational organizations and associations. In addition, the committee staff has conducted numerous surveys, interviews, and independent research projects.

In making this study, the subcommittee has looked at the problem from a statewide level rather than from an individual junior college level. Further, the subcommittee has viewed the junior colleges in relation to other levels of education and other demands made upon the financial resources of the State.

As far as this subcommittee has been able to determine California's junior colleges are, on the whole, doing a remarkable job. They have an enormous assignment and they are providing excellent educational opportunities. This report is not intended to be overly critical of the junior colleges. It is intended, however, to point out certain problems and inadequacies, and to recommend several proposed changes. All such suggestions are made in the spirit of constructive criticism—but, nevertheless, they are deeply held.

This subcommittee has attempted to make positive recommendations. It has not been content with merely saying no, or telling others to prepare legislation, or suggesting further study.

THE REPORT

The junior colleges have proven an elusive and difficult segment of education to assess. At the moment there are 64 junior colleges maintained by 57 different districts. Junior colleges are governed by unified school districts, union high school districts, and independent junior college districts. The quality of instruction and the quantity and quality of programs differ from junior college to junior college.

The public junior colleges are products of the 20th century. Until World War I there were very few junior colleges in the United States and their enrollments were quite small. The heaviest concentration of junior colleges today is in California. The next closest state is New York with 42 junior colleges. California's public junior colleges enroll more than 50 percent of the entire nation's junior college students.

In 1907, legislation was passed permitting the establishment by high school governing boards of postgraduate programs attached to the high schools. In 1910 the Fresno Board of Education authorized the establishment of a two-year postgraduate course in connection with Fresno High School. As a result, Fresno Junior College became the first such institution of its kind in the State.

Considerable expansion took place during the 1920's and by 1930 there were 35 junior colleges in operation. The legislation of 1907 specified that junior college courses should closely approximate the courses offered in the first two years at the university. Junior colleges at that time concentrated almost exclusively on college preparatory work.

During the 1930's the first great change came in the junior colleges: the establishment of "terminal" programs. These two-year vocational programs became accepted as a major function of the junior colleges—and one unique to them.

World War II caused another great change to take place. Thousands of servicemen returning to civilian life decided to attend college. Many of these men could not meet the admission requirements of the state colleges or the university; many could not attend full-time. The junior colleges filled this gap and became extremely active in part-time and adult education programs. Thus, an entirely new dimension was added to the junior college—that of serving part-time and adult students. General education, adult education, and counseling became additional functions of the junior colleges.

Since this immediate postwar period the trend in junior colleges has continued to be all-encompassing. The junior colleges now offer academic work for transfer to institutions of high education, two-year and one-year vocational-technical programs, two-year liberal arts or general education programs, remedial classes in high school subjects, adult education classes, community service programs, etc. The multipurposed junior college is coming to be known as the "community college"; numerous institutions are changing their names from "junior college" to "city college."

From the brief description above it is apparent that the purposes and functions of the junior colleges have evolved over a period of time to meet specific needs as they arose. The Legislature recently adopted Section 22651 to the Education Code which specifically states: "Public junior colleges shall offer instruction through but not beyond the 14th grade level, which instruction may include, but shall not be limited to, programs in one or more of the following categories: (1) standard collegiate courses for transfer to higher institutions, (2) vocational and technical fields leading to employment; and (3) general or liberal arts courses. Studies in these fields may lead to the associate in arts or associate in science degrees."

In reality, the Legislature simply authorized the *status quo*. This subcommittee does not believe these functions are, or should be, considered sacrosanct. The junior colleges are considered to be a part of California's system of higher education, yet they are also considered to be a part of the State's secondary school system. They are, or appear to be, an amorphous bridge between these two elements of education in California.

We have considered the preparation of a recommendation regarding the State's financial assistance to the junior colleges to be of major importance. In order to determine this, however, we found it necessary to inspect various aspects of the junior colleges which pertain to whether increased assistance should be given, in what amounts it should be given and to whom it should be given.

In preparing this report we have not attempted to produce formulas for the distribution of funds. This can be done by others more competent than ourselves. We feel basic issues are involved and basic decisions must be made to serve as guidelines for any proposed legislation. The subcommittee feels it must speak plainly and bluntly on these major issues and not try to confuse or hide them behind involved and complicated formularizations.

In arriving at our recommendations, we have tried to answer the following questions: (1) Do the junior colleges need more money? If so; (2) where and how should the money be expended in order to make it most effective? (3) is the money needed immediately? Should it be expended for operating expenses, or capital outlay, or both? (4) what types of students do we wish to assist? (5) what types of programs do we wish to support? For what programs should we increase support?

Do the Junior Colleges Need More Money?

Let us look for a moment at what the present level of support is and how it came about. Legislation in 1907 authorized high school governing boards to provide postgraduate courses. It was not until 1917, however, that legislation permitted the establishment of junior colleges in only those high school districts with more than \$3 million in assessed valuation. Between 1907 and 1917 there were no apportionments of state funds for junior college purposes. In 1917, \$15 was apportioned for each unit of ad valorem in a junior college. The ad valorem of junior college students was measured in the same manner as for high school pupils.

Legislation in 1921 authorized a district tax for junior college purposes. It also provided for the payment of tuition by the county of residence for pupils not residing in a district maintaining a junior college. This legislation also supported a state fund for junior college education derived entirely from federal funds allocated to promote the mining of coal and other minerals in the public domain. These funds were distributed to districts maintaining a junior college at the rate of \$2,000 for each junior college plus \$100 per a d a., on the condition that at least the same amount of money was contributed by the school districts.

The next significant act occurred in 1931, when legislation was enacted which provided for interdistrict contracts between districts maintaining junior colleges for the education of their respective students. It also required the State Board of Education to approve junior college programs before the college was eligible for state support. And finally, it established a mandatory payment of tuition for pupils not residing in a district maintaining a junior college through the establishment of a junior college tuition fund.

In 1935 the method of measuring a d a of junior college students was established as a minimum year of 175 days based upon 15 hours of attendance per week. Not more than one a d a per student per year could be counted. The maximum tax rate for junior college purposes was established in 1937. Thirty-five cents was set as the maximum tax rate for independent junior college districts and the limits of high school and unified school districts maintaining junior colleges was increased 35 cents. This same maximum tax rate exists today.

In 1945 provision was made for counting the attendance of junior college students in summer sessions for apportionment purposes. A d a. continued to be measured on the basis of one a d a. for each pupil, with a minimum of 15 hours of attendance per week for the year required.

The Legislature, in 1947, established the concept of state support based on a foundation program. The foundation program was provided by basic state aid, contributions by the district in accordance with its ability, and state equalization aid, if needed, to bring the district to the level of the foundation program. The plan provided for the apportionment of \$2,000 for each junior college. Ninety dollars per a d a. was apportioned as basic state aid. The district contributed the amount derived from levying a 20-cent tax against its assessed valuation. If necessary, state equalization aid was added to provide the \$200 per a d a. level set in the foundation program.

In 1949 the Legislature defined a unit of junior college a d a. as the total number of hours of student attendance divided by 525. This also meant that each hour of required attendance in educational activities under the immediate supervision of a certificated employee was credited for apportionment purposes.

In 1953 separate accounting of attendance for adults was required. Increases in basic aid and in the foundation program also were voted during this year and again in 1957. In 1957 the foundation program was set at \$410 per a d a. Basic state aid amounted to \$125 and a district's contribution was equal to the income derived from levying a 33-cent tax rate against its assessed valuation. The unit of a d a. was

still computed by dividing the hours of attendance by 525. This is still in effect today and, in fact, represents the attendance of a student for three hours per day, five days a week, for 175 days of the year.

The 1959 Legislature increased the foundation program to \$424 per a d a. Basic state aid remained at \$125. The Legislature also authorized that in 1961 the foundation program would be increased to \$495 per a d a with a district contribution equal to the amount of 24 cents multiplied by the assessed valuation of the district. Beginning in 1961, the Legislature has also provided that equalization aid can only be computed on the basis of students residing in the district.

This, then, is the present means of supporting the junior colleges. Several other aspects of financing should be noted, however. One of these is the percentage of the State's financial support for the operating expenses of the junior colleges.

The following table shows the relationships between current expense of education and state apportionments for independent junior college districts during the past five years.

Fiscal year	Current expense of education	State School Fund apportionments	Per cent	A d a	Current expense per a d a	State apportionments per a d a
1954-55	28,016,741	11,147,713	39.8	68,174	410.96	163.52
1955-56	31,642,808	11,084,824	35.0	72,557	436.11	152.77
1956-57	36,961,761	11,323,132	30.6	77,909	474.42	145.34
1957-58	43,403,588	12,979,153	29.9	87,654	495.17	148.07
1958-59	49,983,950	14,188,959	28.4	96,027	520.52	147.76

This shows there has been a steady decline in the ratio of state support from 39.8 percent in 1954-55 to 28.4 percent in 1958-59. This table, however, represents only independent junior college districts and can only be considered as indicative of a general level of support for all junior colleges. Many large junior colleges such as Long Beach, San Diego, Fresno, San Francisco, and Sacramento are not included in the figures shown above. Adequate statewide figures are not available because unified and many high school districts do not, and claim they cannot, separate their costs of education for each level of education. A reasonable approximation of the State's percentage of support would probably be somewhere between 29 and 32 percent.

It is evident that the State's percentage of financial support for the junior colleges has been progressively declining. There is no evidence this trend will be reversed. Indeed, this trend will undoubtedly increase. Two recommendations of the Master Plan for Higher Education which will vitally affect the junior colleges have already been enacted by the Regents of the University and the State Board of Education. The first of these is that admission requirements for the university will be raised slightly so that only the top 12½ percent of California's high school graduates will be eligible for admission. State college admission requirements will be raised so that only the top 33½ percent of the high school graduates will be eligible to attend. This measure will go into effect in the fall of 1962 and should divert into the junior colleges approximately 10,000 students who would otherwise have gone to the university or a state college.

The second recommendation is that by 1975 the percentage of undergraduates in the lower divisions of the state colleges and the university be decreased 10 percentage points below that existing in 1960. This recommendation will result in the estimated transfer of some 40,000 lower division students to the junior colleges by 1975. The respective governing boards are to determine how this is to be accomplished. This subcommittee knows of no immediate plans to enact this transfer. Even without the transfer of these students, however, enrollments of the junior colleges will continue to increase as the high school graduates continue to increase.

The State's percentage of support of the junior colleges should also be compared with other levels of education in California. In 1959-60 almost 50 percent of the funds expended for the current operation of public schools came from local taxation, 47 percent came from state sources, and 3 percent from federal funds. Elementary schools received approximately 60 percent of their operating funds from the State, high schools received about 40 percent, junior colleges received 28-32 percent. The state colleges received an estimated 88 percent of their operating costs from the State, and the university received approximately 66 percent from state sources.

Other Sources of Income

State and local districts are not the only sources of junior college income. Minimal assistance is received from the federal government, community service ad valorem taxes and county subventions. One source of funds, however, that is not minimal is the tuition received by junior colleges for students residing outside their district. Education Code Sections 20201-11 require that a county board of supervisors levy a special tax upon all taxable property in the county not situated in a school district maintaining a junior college in order to defray the following amounts on students living in this nondistrict territory but attending a junior college:

1. The total current expense of education, exclusive of the expense for transportation of pupils, during the next preceding fiscal year of all junior college pupils in grades 13 and 14 residing in the county and not in any school district maintaining a junior college, less state and federal apportionments received during the next preceding fiscal year for such pupils in grades 13 and 14.

2. The actual expense of transportation of such pupils.

3. An amount equal to \$300 per unit of a d a of such pupils during the preceding fiscal year for the use of buildings and equipment.

What actually happens is that a junior college reports the number of students residing outside its district to the county superintendent of schools involved. The college states what the cost of a unit of a d a was for that particular year. For example, the average cost of a unit of a d a during 1958-59 in a junior college was \$521. If the college was not on equalization, it received \$125 from the state. The nondistrict territory of the county then owes the junior college \$396 for every unit of a d a, based on students coming from the nondistrict territory of that county. In addition, the nondistrict territory owes the junior

college \$300 for the use of its facilities. This amount may be used only for capital outlay purposes. For one unit of a d a based on students from nondistrict territory the college may collect as much as \$820. Many junior colleges have large numbers of out-of-district students, particularly in evening classes.

Out-of-district tuition has become a highly lucrative source of income. One junior college in Southern California, for example, had a 1958-59 budget of \$2,731,367, excluding capital outlay. The college received \$1,752,841 from state and federal sources. The college collected over half a million dollars from out-of-district tuition. The local district only had to contribute \$426,291 to the operation of their junior college.

Another junior college collected \$798,502.51 from state and federal sources and \$262,136.25 from out-of-district tuition. The total budget of the college was \$2,022,104. This meant that the district had to contribute \$961,466 from local tax sources, which is less than half the cost of operations. Had the district taxed the maximum 35 cents they would have collected a total of \$2,282,876 and for the year 1958-59 would have had a surplus of \$1,321,410. In addition the college collected \$366,078 for capital outlay expenses on out-of-district students.

The third example is a Northern California junior college whose budget was \$1,409,369. State and federal apportionments amounted to \$625,285, out-of-district tuition was \$425,437, the district's contribution was \$358,647. In addition the district received \$558,679 in capital outlay funds from out-of-district students. Had this junior college district assessed the full 35-cent tax for the use of the junior college, they would have had a surplus of \$401,856.

WHERE AND HOW SHOULD ADDITIONAL MONEY BE EXPENDED?

During the past several years numerous proposals have been before the Legislature to provide increased assistance to junior colleges for both operating expenses and capital outlay. These measures have consistently failed for financial reasons.

Junior colleges have never received state assistance for capital outlay costs. Junior colleges have been built almost exclusively through local district taxation. Witnesses consistently told this subcommittee that state assistance for junior college capital outlay was badly needed. Yet, this subcommittee received only two concrete proposals as to how this might be accomplished.

One proposal would provide annual grants for capital outlay purposes to districts maintaining junior colleges. These grants would be based on the foundation program concept now used for operating expense apportionment. This proposal is virtually the same one contained in Assembly Bill 79 introduced during the 1960 session of the legislature. It would cost approximately five and a half million dollars per year and the cost would increase as enrollments increase.

The other proposal would establish a state, interest-free, loan fund available to junior colleges on a priority basis of greatest need. This proposal is almost identical to Assembly Bill 40 and Senate Bill 12 introduced during the 1960 legislative session. At that time the cost of this program was estimated at a minimum of 30 million dollars over a three-year period.

Neither of these proposals are new or offer anything different than what has been presented to, and considered by, the Legislature previously. The loan fund concept, while good in theory, is not financially practical. This subcommittee simply fails to see where it could obtain ten million dollars from the State's general fund each year for the next three years. Junior colleges are, incidentally, eligible to apply to the State Allocations Board for assistance if they qualify as an impoverished school district. To our knowledge no junior college has applied for such aid.

The proposal for distributing capital outlay funds on the basis of the foundation program is not viewed with enthusiasm by this subcommittee. The proposal presented by the State Department of Education is so complex and confused that even after intensive study we are still not able to ascertain exactly how this plan would operate. We fail to comprehend why a less complicated and a more easily understood basis for distributing such funds cannot be prepared. Many questions exist in our minds regarding this proposal. For example: Do we wish to give aid to all districts regardless of their wealth or their past efforts? Are we getting enough aid to those colleges badly in need of such assistance so that the aid is really effective? Are we not encouraging the formation of new junior colleges without adequate tax bases?

Neither of these proposals satisfactorily meets the problems in an effective nor realistic method. The subcommittee realizes it has not heard sufficient testimony or proposals on this matter. However, other organizations claiming to be vitally interested in this subject have not placed any other concrete proposals before the subcommittee for its consideration. Therefore, we cannot make a positive, reasonable, or justifiable recommendation regarding this matter at this time. In so doing we do not indicate that we feel there is equity in the present situation, because we realize the state colleges and the University receive almost all of their capital outlay costs from state sources.

Only 82 percent of the State's support of the junior colleges for operating expenses is apportioned as basic aid and 18 percent is apportioned as equalization aid. Elementary schools receive 30 percent of their apportionment through equalization and 23 percent of the apportionment for high schools is equalization. Since there is a high degree of wealth in terms of assessed valuation per junior college average daily attendance in most districts any increase in state support probably should be apportioned on an equalization basis rather than on the basis of an across-the-board increase. Bills before the last session of the Legislature which would have given a flat \$35 increase per a d. a. are, therefore, not recommended for passage.

This subcommittee has spent a great deal of time in determining where present funds of the junior colleges are being expended. The law provides that a junior college district may levy a maximum tax of 35 cents for the operating expenses of the junior college; high school districts maintaining a junior college are permitted to levy \$1.10; and unified school districts are permitted to levy a maximum tax of \$2. If unified districts did not maintain a junior college they would be permitted to levy only a maximum tax of \$1.65. It had been this subcommittee's understanding that districts levying the maximum tax

would be expending the amount raised by a 35-cent tax on their junior college. This is not the case we have discovered. On the following pages are the results of a committee staff survey which was taken regarding the 1958-59 current operating expenses of all junior colleges. The information contained has been supplied by the superintendents of the districts involved unless otherwise noted. Figures do not include capital outlay costs.

**JUNIOR COLLEGES MAINTAINED BY UNIFIED SCHOOL DISTRICTS
FISCAL YEAR 1958-59, EXCLUDING CAPITAL OUTLAY**

Fresno City College

Add	2,704
Assessed valuation	\$201,741,730.00
Tax rate	2.0534
Revenues	1,417,501.88
Expenditures	1,325,573.87
Surplus (Not earmarked for junior college purposes)	91,928.01
Out-of-district capital outlay revenue (Earmarked for junior college purposes)	239,790.00

Glendale College

Add	3,973
Assessed valuation	\$210,477,710.00
Tax rate	2.5793
Revenues	1,701,235.00
Expenditures	1,500,017.00
Surplus (Not earmarked for junior college purposes)	201,218.00
Out-of-district capital outlay revenue (Earmarked for junior college purposes)	180,275.00

Comment: Glendale is on a 50 cents tax override. The superintendent stated "We have pro-rated this aspect of revenue by increasing the 35 cents legal limit for junior colleges by 25 percent." This would account for the large surplus. However, the amount raised on only a 35 percent tax would be \$1,488,892. This is just \$11,125 less than expenditures.

Long Beach City College

Add	8,309
Assessed valuation	\$876,457,570.00
Tax rate	2.7622
Revenues	3,750,013.49*
Expenditures	3,780,762.00
Deficit	30,749.00
Out-of-district capital outlay revenue (Not earmarked for junior college purposes)	210,705.00

Oakland City College

Add	5,650
Assessed valuation	\$595,807,873.00
Tax rate	2.81
Revenues	3,531,000.00
Expenditures	3,016,614.00
Surplus (Not earmarked for junior college purposes.)	514,986.00
Out-of-district capital outlay revenue (Earmarked for junior college purposes)	471,000.00

* These schools did not submit the amount of money raised by local district taxes. In these cases, we have simply taken 35 cents against the assessed valuation and added it to their figures.

Palo Verde College

A d a	247
Assessed valuation	\$27,068,500 00
Tax rate	2 5770
Revenues	127 377 56*
Expenditures	125,000 00
Surplus (Not earmarked for junior college purposes)	2 377 56
Out-of-district capital outlay revenue (Not earmarked for junior college purposes)	1,700 00

Comment The operating costs and revenues attributable to the college are estimates by the superintendent. Complete and separate accounts are not maintained by the district.

Sacramento City College

A d a	4,120
Assessed valuation	\$278,731,570 00
Tax rate	3 01
Revenues	2,112,838 10
Expenditures	2,071,744 88
Surplus	40,593 12
Out-of-district capital outlay revenue (Not earmarked for junior college purposes)	279,624 45

Comment The superintendent indicated that \$808,411 38 was raised from local taxes, 35 cents times the assessed valuation however would show approximately \$975,500 49 being raised locally. If this figure were used the surplus of the district would have been \$207 742 83. Sacramento is also on an override tax.

San Jose City College

A d a	3 724
Assessed valuation	\$235,852,400 00
Tax rate	2 8150
Revenues	1,874,457 54*
Expenditures	1,400 369 10
Surplus (Not earmarked for junior college purposes)	465,086 44
Out-of-district capital outlay revenue (Not earmarked for junior college purposes)	538,679 00

San Diego Junior College

A d a	5,650
Assessed valuation	\$717,701,990 00
Tax rate	2 6202
Revenues	3,572,595 72*
Expenditures	2,022,104 74
Surplus (Not earmarked for junior college purposes)	1,550,490 98
Out-of-district capital outlay revenue (Not earmarked for junior college purposes)	306,078 00

San Francisco City College

A d a	6,244
Assessed valuation	\$1,364,006,083 00
Tax rate	1 8256
Revenues	4,392,799 77
Expenditures	3 000,151 55
Surplus (Not earmarked for junior college purposes)	783,648 22
Out-of-district capital outlay revenue (Unable to determine whether funds are earmarked for junior college purposes or not)	98,404 80

Comment San Francisco is taxing under the \$2 maximum authorized by law for a unified school district maintaining a junior college. Had the full 35-cent tax been levied the surplus would have been approximately \$2,208,553 97.

* These schools did not submit the amount of money raised by local district taxes. In these cases we have simply taken 35 cents against the assessed valuation and added it to their figures.

Santa Monica City College

A d a	6,575
Assessed valuation	\$225,204,250 00
Tax rate	2 0303
Revenues	3,003,605 87*
Expenditures	2,731,307 00
Surplus (Not earmarked for junior college purposes)	262,238 87
Out-of-district capital outlay revenue (Not earmarked for junior college purposes)	5,853 00

Stockton College

A d a	2 600
Assessed valuation	\$109,005,980 00
Tax rate	2 8150
Revenues	1 205 427 10
Expenditures	1 335,200 65
Deficit	39,773 55
Out-of-district capital outlay revenue (Earmarked for junior college purposes)	209,415 14

Vallejo Junior College

A d a	1,358
Assessed valuation	\$60,395 040 00
Tax rate	3 05
Revenues (\$517,573)	476,514 00
Expenditures	488,023 00
Deficit (Surplus—\$61,059)	27,409 00
Out-of-district capital outlay revenue (Not earmarked for junior college purposes)	44,122 00

Comment The figures in parentheses above are those of the staff who could not arrive at the same figures as those submitted by the superintendent. Our revenue figure of \$517,573 is based solely on the total state apportionment plus 35 cents levied on the district's assessed valuation. This figure does not include out-of-district tuition, county subventions, federal aid, etc. Nonetheless, we arrive at a \$61,059 surplus compared to the submitted deficit figure of \$27,409.

**JUNIOR COLLEGES MAINTAINED BY UNION HIGH SCHOOL DISTRICTS
FISCAL YEAR 1958-59, EXCLUDING CAPITAL OUTLAY**

Antelope Valley College

A d a	1 026
Assessed valuation	\$177,904,570 00
Tax rate	1 1270
Revenues (\$681,230 00)	596,422 00
Expenditures	607,084 00
Deficit (Surplus—\$74,146 00)	10,662 00
Out-of-district capital outlay revenue (Earmarked for junior college purposes)	6,669 00

Comment The figures in parentheses above are those of the staff who could not arrive at the same figures as those submitted by the superintendent. Our revenue figure of \$681,230 00 is based solely on the total state apportionment plus 35 cents levied on the district's assessed valuation. This figure does not include out-of-district tuition, county subventions, federal aid, etc. Nonetheless, we arrive at a \$74,146 00 surplus compared to the submitted deficit figure of \$10,662.

Bakersfield College

A d a	3,184
Assessed valuation	\$474,169,370 00
Tax rate	1 6256
Revenues	2,271,583 00†
Expenditures	1 847,782 00
Surplus (Not earmarked for junior college purposes)	423,901 00
Out-of-district capital outlay revenue (Earmarked for junior college purposes)	58,350 00

* These schools did not submit the amount of money raised by local district taxes. In these cases, we have simply taken 35 cents against the assessed valuation and added it to their figures.

† These schools are operating on override taxes. How much of this override is attributable to the junior college and how much to the high school is difficult to determine.

Citrus Junior College (Azusa)

A d a	1.208
Assessed valuation	\$82,888,160 00
Tax rate	1.4804
Revenue	589,455 63
Expenditures	674,415 87
Deficit (Covered by a 1955 tax override)	84,960 24
Out-of-district capital outlay revenue (Earmarked for junior college purposes)	88,908 00

Coalinga College

A d a	540
Assessed valuation	\$164,996,500 00
Tax rate	0.97
Revenue	611,781 22 *
Expenditures	503,077 14
Surplus (not earmarked for junior college purposes)	108,704 08
Out-of-district capital outlay revenue (earmarked for junior college purposes)	49,800 00

Comment: In submitting the revenue figures, the superintendent said that he could only list actual junior college revenues as follows \$64,680 in state a d a and \$184,108 22 in out-of-district tuition. The entire district revenue amounted to \$2,184,387 90; however, local funds are not broken down by level of education. The superintendent further stated "Since our tax rate for the 1958-59 year was \$0.976, I suppose it could be said that the difference between that rate and the 75 cents permitted by law for high school operation could be interpreted as revenues for maintaining a junior college. This, however, would not be actually true since a 75-cent tax rate would not have been levied to maintain the high school in 1958-59." For lack of better figures, however, the committee staff has used 22 cents to determine the local district tax.

Imperial Valley College

A d a	338
Assessed valuation	\$28,832,097 00
Tax rate	1.1260
Revenue	196,640 00
Expenditures	171,878 00
Surplus (not earmarked for junior college purposes)	24,762 00
Out-of-district capital outlay revenue (not earmarked for junior college purposes)	43,650 00

Lassen Junior College

Comment: The superintendent was unable to provide the information requested because they do not separate their figures since the junior college is combined with the high school.

Monterey Peninsula College

A d a	1.619
Assessed valuation	\$55,645,335 00
Tax rate	1.83
Revenues	1,305,986 91 *
Expenditures	1,070,076 95
Surplus (earmarked for junior college purposes)	235,909 96
Out-of-district capital outlay revenue (earmarked for junior college purposes)	218,205 00

Napa College

Comment: Napa College submitted only expenditures. They did not submit revenue figures.

* These schools are operating on override taxes. How much of this override is attributable to the junior college and how much to the high school is difficult to determine.

Oceanside-Carlsbad College

A d a	662
Assessed valuation	\$53,870,980 00
Tax rate	1 1198
Revenues	299,634 00
Expenditures	299,634 00
Surplus	None
Out-of-district capital outlay revenue (not earmarked for junior college purposes)	8,640 00

Porterville College

A d a	415
Assessed valuation	\$56,721,245 00
Tax rate	1 98
Revenues	275,373 26 *
Expenditures	275,371 53
Surplus	1 73
Out-of-district capital outlay revenue (earmarked for junior college purposes)	12,528 00

Rosedley College

A d a	1,287
Assessed valuation	\$24,582,020 00
Tax rate	1 62
Revenues	655,970 00 *
Expenditures	680,548 00
Deficit	1,578 00
Out-of-district capital outlay revenue (earmarked for junior college purposes)	171,984 00

San Benito College

A d a	134
Assessed valuation	\$43,263,580 00
Tax rate	1 11
Revenues	200,574 03
Expenditures	141,732 38
Surplus (not earmarked for junior college purposes)	58,841 65
Out-of-district capital outlay revenue (not earmarked for junior college purposes)	3,253 00

Santa Barbara Junior College

A d a	1,256
Assessed valuation	\$146,853,700 00
Tax rate	1 42
Revenues	646,489 00 *
Expenditures	447,884 00
Surplus (not earmarked for junior college purposes)	198,605 00
Out-of-district capital outlay revenue (earmarked for junior college purposes)	21,712 00

Shasta College

A d a	1,257
Assessed valuation	\$79,043,788 00
Tax rate	1 12
Revenues	744,040 24
Expenditures	638,298 48
Surplus (not earmarked for junior college purposes)	105,741 76
Out-of-district capital outlay revenue (not earmarked for junior college purposes)	106,897 00

* These schools are operating on override taxes. How much of this override is attributable to the junior college and how much to the high school is difficult to determine.

Taft College

A d a	514
Assessed valuation	\$122,203,070 00
Tax rate	1 1245
Revenues	534,945 12
Expenditures	545,204 01
Deficit	10,258 89
Out-of-district capital outlay revenue (not earmarked for junior college purposes)	11,928 30

Comment When providing the above information the superintendent stated "The adult education program is associated with the college program as an extended day program as well as an evening program, therefore, the costs of the adult education and extended program have been included in the 13th and 14th years"

Ventura College

A d a	2,197
Assessed valuation	\$200,974,350 00
Tax rate	1 10
Revenues	1,582,842 00
Expenditures	1,445,419 01
Surplus (earmarked for junior college purposes)	136,922 99
Out-of-district capital outlay revenue (not earmarked for junior college purposes)	326,346 00

**JUNIOR COLLEGES MAINTAINED BY JUNIOR COLLEGE SCHOOL DISTRICTS
FISCAL YEAR 1958-59, EXCLUDING CAPITAL OUTLAY**

American River Junior College

A d a	1,770
Assessed valuation	\$170,633,850 00
Tax rate (includes 18-cent bond redemption)	0 58
Revenues	974,979 62
Expenditures	1,010,296 37
Deficit	35,316 75
Out-of-district capital outlay revenue	9,343 26

Cerritos Junior College

A d a	955
Assessed valuation	\$180,305,870 00
Tax rate	0 42
Revenues	879,330 00
Expenditures	881,145 00
Surplus	18,185 00
Out-of-district capital outlay revenue	30,966 00

Chaffey College

A d a	2,247
Assessed valuation	\$220,829,640 00
Tax rate	0 35
Revenues	1,324,775 83
Expenditures	1,268,152 32
Surplus	56,623 51
Out-of-district capital outlay revenue	116,365 80

Compton College

A d a	2,993
Assessed valuation	\$229,503,600 00
Tax rate	0 37
Revenues	1,499,111 00
Expenditures	1,536,492 00
Deficit	37,381 00
Out-of-district capital outlay revenue	82,683 00

Contra Costa District (Composed of Contra Costa College and Mt Diablo Valley College)

A d a	4,045
Assessed valuation	\$741,457,115 00
Tax rate	0 34
Revenues	3,284,927 23
Expenditures	2,264,802 03
Surplus	1,020,124 30
Out-of-district capital outlay revenue	83,067 00

Comment: All financial records are kept on a districtwide basis, thus it was impossible to provide data for each college separately

El Camino College

A d a	5,777
Assessed valuation	\$670,280,530 00
Tax rate (Includes bond redemption)	0 57
Revenues	3,485,693 00
Expenditures	3,138,037 00
Surplus	347,326 00
Out-of-district capital outlay revenue	5,439 00

Foothill Junior College

FIRST YEAR OF OPERATION COMPLETE FIGURES
NOT AVAILABLE

Fullerton Junior College

A d a	4,143
Assessed valuation	\$181,823,750 00
Tax rate (Includes 14-cent bond redemption)	0 53
Revenues	2,071,511 79
Expenditures	1,861,531 72
Surplus	209,980 07
Out-of-district capital outlay revenue	571,300 08

Allan Hancock College (Santa Maria Jt J C District)

A d a	605
Assessed valuation	\$121,500,000 00
Tax rate	0 35
Revenues	480,487 07
Expenditures	288,347 60
Surplus	200,491 47
Out-of-district capital outlay revenue	24,741 00

Hartnell College

A d a	1,377
Assessed valuation	\$209,013,840 00
Tax rate	0 35
Revenues	1,128,951 98
Expenditures	808,374 23
Surplus	260,507 95
Out-of-district capital outlay revenue	117,800 10

Los Angeles Junior College District

A d a	32,897
Assessed valuation	\$5,530,904,200 00
Tax rate	0 280
Revenues	17,319,358 46
Expenditures	17,489,569 72
Deficit	170,211 26
Out-of-district capital outlay revenue	900,708 00

College of Marin

FAILED TO ANSWER QUESTIONNAIRE

Modesto Junior College

A d a	3,312
Assessed valuation	\$103,713,140 00
Tax rate (Includes 8-cent bond redemption)	0 51
Revenues	1,788,824 14
Expenditures	1,750,005 68
Surplus	28,828 46
Out-of-district capital outlay revenue	426,294 00

Mount San Antonio College

A d a	3,642
Assessed valuation	\$359,253,450 00
Tax rate	0 41
Revenues	2,299,635 00
Expenditures	2,107,530 00
Surplus	192,105 00
Out-of-district capital outlay revenue	333,894 00

Orange Coast College

A d a	3,180
Assessed valuation	\$206,672,550 00
Tax rate	0 37
Revenues	1,720,534 12
Expenditures	1,514,213 77
Surplus	215,320 35
Out-of-district capital outlay revenue	343,014 00

Palomar College (Northern San Diego City Junior College District)

A d a	795
Assessed valuation	\$98,753,500 00
Tax rate	0 359
Revenues	537,181 00
Expenditures	494,079 00
Surplus	43,102 00
Out-of-district capital outlay revenue	23,324 00

Pasadena City College

A d a	9,081
Assessed valuation	\$387,557,610 00
Tax rate	0 24
Revenues	4,073,395 40
Expenditures	4,315,310 12
Deficit	241,915 72
Out-of-district capital outlay revenue	825,405 00

Riverside City College

A d a	2,282
Assessed valuation	\$199,515,500 00
Tax rate	0 41
Revenues	1,150,006 38
Expenditures	1,071,045 60
Surplus	78,960 69
Out-of-district capital outlay revenue	52,000 00

San Bernardino Valley College

A d a	3,414
Assessed valuation	\$243,424,580 00
Tax rate	0 88
Revenues	1,636,175 00
Expenditures	1,692,724 00
Deficit	56,549 00
Out-of-district capital outlay revenue	204,404 00

College of San Mateo

A d a	3,966
Assessed valuation	\$344,490,970 00
Tax rate	0 36
Revenues	2,326,047 57
Expenditures	2,131,276 91
Surplus	195,370 96
Out-of-district capital outlay revenue	406,117 70

Santa Ana College

A d a	1,675
Assessed valuation	\$122,162,920 00
Tax rate	0 347
Revenues	853,409 89
Expenditures	871,800 28
Deficit	18,390 39
Out-of-district capital outlay revenue	143,192 70

Santa Rosa Junior College

A d a	2,122
Assessed valuation	\$118,801,190 00
Tax rate	0 40
Revenues	1,166,595 00
Expenditures	1,173,728 00
Deficit	7,133 00
Out-of-district capital outlay revenue	221,912 00

College of the Sequoias

A d a	1,824
Assessed valuation	\$157,400,615 00
Tax rate	0 35
Revenues	970,370 00
Expenditures	822,092 83
Surplus	137,277 17
Out-of-district capital outlay revenue	162,630 00

Sierra College

A d a	778
Assessed valuation	\$109,185,690 00
Tax rate	0 37
Revenues	530,500 22
Expenditures	500,427 58
Surplus	21,072 34
Out-of-district capital outlay revenue	64,373 03

College of the Siskiyous

Comment: College of the Siskiyous offered only an evening program in 1958-59
Day classes began in 1959-60

Yuba College

A d a	1,257
Assessed valuation	\$50,044,155 00
Tax rate	0 39
Revenues	711,747 18
Expenditures	712,817 22
Deficit	1,070 04
Out-of-district capital outlay revenue	210,644 90

The subcommittee was shocked to learn that money received from a junior college tax was being used to support other levels of education in unified and union high school districts. It is now apparent they are not utilizing their full resources to operate their junior college, but instead are using this money to run their high schools and elementary

schools. Although this is legally permissible and is considered one of the advantages of a unified school district, this subcommittee does not feel it is morally right for a school district to levy the maximum 35-cent tax for its junior college and use only the equivalent of a 22-cent or 24-cent tax. How such a unified school district can come before the Legislature and plead that it needs more money to operate its junior college is difficult to understand or believe. The methods used by many unified and high school districts described above hardly allows the Legislature to determine which segments of education are really in need of increased assistance and which ones are not. If more money is needed to operate elementary schools and high schools then districts should come to the Legislature and state this fact, but they should not come to the Legislature and ask for more money for the junior college so that they can continue to use local money originally taxed for the junior college to operate their high school.

Most unified and many high school districts maintaining junior colleges told this subcommittee that they do not maintain separate accounts nor bookkeeping procedures for the junior colleges. Without this type of accounting it becomes very difficult for the Legislature to determine exactly how much money is needed for the junior college in these districts. In some cases these districts have come before this subcommittee and stated that they were on override taxes and thus were utilizing more than their local resources should bear. However, when the subcommittee looked closely at these figures they discovered that less than the 35-cent tax was being used on behalf of the junior college. An override tax which is being used for elementary and high school programs should not be prorated to junior colleges. Although the law does not specifically require unified and high school districts to spend the full 35 cents on their junior college we feel the intent of the legislation is clear because without having a junior college they could not have levied a 35-cent tax in the first place.

The State has only a limited amount of money available to use to increase funds to the junior colleges. In order to recommend any plan which has a chance for success we must be very realistic in our approach. We must provide additional money only to those junior colleges badly in need of additional support. Assistance, therefore, should be based only on equalization aid. In order to qualify for increased state assistance a local district must be making a maximum effort. No district should receive more than basic state aid if it is not levying and spending a tax for junior college operating expenses of at least 30 cents against every \$100 of its assessed valuation. Witnesses have contended that a minimum qualifying tax rate of 24 cents should be used so that junior colleges might have an "enriched" program if they desired without resorting to override taxes. This subcommittee feels that a 5-cent leeway for "enriched" programs is sufficient. In addition local governing boards now have the right to levy a 5-cent ad valorem tax for community services.

An accurate system of accounting for the exact costs of the operations of junior colleges in unified and high school districts should be devised immediately by the State Department of Education. The subcommittee feels this is so important that until such a system has been devised and the cost figures submitted on an annual basis to the State

Department of Education and the office of the Legislative Analyst, no additional state money should be granted to any such district maintaining a junior college. Without this kind of knowledge we cannot know where the current funds being provided by the State are being spent, we cannot be assured that the district is making its maximum contribution, we cannot ascertain how much additional money is needed from the State, and most importantly we cannot be certain that any additional funds provided by the State will be used solely for junior college purposes.

Evidence indicates that the present foundation program of \$494 per a d a in the junior colleges is not realistic. In 1958-59 the average per student costs in the junior colleges was \$521. Thus per student cost will obviously increase as salaries and costs continue to rise. The State Department of Education has estimated that by 1961-62 the statewide average will have risen to a point where a foundation program of \$580 per unit of a d a will be necessary. Although we have not received a great deal of testimony on this subject, we are inclined to take the opinion of experts in this field and recommend that the foundation program be increased to somewhere between \$525 and \$580 per a d a.

An additional comment should be made relative to areas not presently in junior college districts. The disparity between the relative tax efforts of some counties compared to other counties with comparable numbers of high school graduates is striking, as will be seen by the chart below.

**COUNTIES WITHOUT JUNIOR COLLEGES DATA RELATING TO COMPUTED
DOLLAR YIELD FOR JUNIOR COLLEGE PURPOSES**

Countries	1959-60 county junior college tax rate	1959 assessed valuation (in thousands)	Yield of junior college tax	1957-58 high school graduates	Computed dollar yield per high school graduate
Alpine	---	---	---	---	---
Amador	\$0.093	\$38,337	\$35,653	08	\$364
Butte	095	151,904	144,394	748	193
Calaveras	15	25,000	38,940	103	378
Colusa	12	46,078	55,293	125	442
Del Norte	060	23,757	16,392	131	125
El Dorado	16	64,041	102,465	201	509
Glenn	025	54,027	13,500	208	65
Humboldt	08	159,666	47,890	939	51
Inyo	1179	53,841	63,532	118	538
Kings	29	127,095	368,575	510	722
Lake	10	33,081	33,081	126	262
Madera	173	90,427	176,438	348	449
Mariposa	139	11,901	16,542	33	501
Mendocino	15	85,604	128,496	498	255
Merced	20	147,857	293,714	811	305
Modoc	0635	24,534	15,436	87	177
Mono	---	---	---	---	---
Nevada	43	30,771	171,015	218	792
Plumas	030	72,300	28,197	162	174
Sierra	115	6,434	7,390	26	285
Sutter	30	70,320	274,283	347	790
Tehama	16	52,297	83,075	273	306
Trinity	11	15,578	17,135	79	217
Tuolumne	20	33,507	67,014	145	462
Yolo	26	121,907	315,398	540	584

The master plan for higher education recommended that: "All the territory of the State not now included within districts operating junior colleges be brought into junior college districts as rapidly as possible, so that all parts of the State can share in the operation, control and support of junior colleges. Pending the achievement of this objective, means be devised to require areas that are not a part of a district operating a junior college to contribute to the support of junior college education at a rate or level that is more consistent with the contributions to junior college support presently made by areas included in districts that maintain junior colleges."

This recommendation is sound and well founded. This could also apply to nondistrict territory within counties already having a junior college. We do not mean, however, that every county or every area in this State should form a junior college district. There is evidence in the recent past that junior colleges have been formed in districts which cannot adequately finance colleges on their own tax base without making tax rates exorbitant on the local property owners. Ultimately students in these poorly tax-based colleges do not receive adequate instruction or the State must provide enormous amounts of equalization aid. Neither of these are adequate solutions to the problem created by poor foresight and district planning. This subcommittee therefore urges the State Board of Education to re-evaluate its criteria for the establishment of new junior college districts to make certain that such districts are financially feasible.

WHOM DO WE WISH TO SUPPORT?

Ever since the junior colleges began they have operated as "the open door" of California higher education. Requirements have been minimal or nonexistent for admission. Education Code Section 5706 states: "The principal of any two-year junior college shall admit to the junior college any high school graduate and any other person over 18 years of age who in his judgment is capable of profiting from the instruction offered. The principal of any two-year junior college may admit to the junior college any apprentice, as defined in Section 3077 of the Labor Code, who in the principal's judgment is capable of profiting from the instruction offered." Actually this does not quite reflect the correct picture of some of California's junior colleges.

Approximately 65-75 percent of the students enrolling in a junior college each year state that they want to take classes leading to transfer to an institution of higher education with the ultimate goal of a four-year degree. Many students who enter junior colleges are already eligible for admission to state colleges and the university and after two years transfer to those institutions as juniors. Many students not eligible for admission to the state colleges or the university upon graduation from high school attend the junior college, prove their academic ability, and transfer to higher institutions. The records of these two categories of students upon transfer to both the state colleges and the university have been outstanding. In some cases, the transfers actually do better in their junior and senior years than students who entered as freshmen.

The great majority of the students stating a desire to pursue transfer classes, however, will never do so. It has been estimated that 25-35 percent of those enrolling in a junior college will voluntarily drop out by the end of the first year. Some leave for personal reasons, but the majority realize they are not capable of collegiate work. Counseling and guidance are an essential function of the junior colleges. Extensive testing and counseling programs are available to all new freshmen in the hopes of making the student aware of his capabilities and his inabilities. Most junior colleges do not prohibit students from attempting transfer classes if they desire. The hope is that once the student realizes he is not capable of transfer work he will turn to more realistic pursuits and can be enrolled in vocational, technical, and terminal programs which will equip him to earn a better living and to be a more enlightened citizen. Junior colleges are not always successful in this endeavor, but they are making a determined effort which is to be commended and encouraged.

Although no restriction is made on admission to the junior college, several of the institutions are making a determined effort to strengthen standards and requirements. A major force in the drive for increased standards has been the California Junior College Association and it can be proud of its actions in this regard. Several junior colleges place all entering students, who do not have a high school diploma, on immediate probation. The student must maintain a C average during the first semester or he is dismissed. Competent studies have shown that the likelihood for success of students entering without a high school diploma is very slim. Whether a junior college will accept students without high school diplomas, should be determined by local governing boards and the Education Code should be changed accordingly. If a local board decides to admit a student without a high school diploma, however, he should be placed on immediate probation and given one semester in which to prove himself. Too many junior colleges allow students to remain even though they have been on probation (making a D or F average) for as many as three semesters. This retention policy is absurd. The State has a responsibility to provide an opportunity for all students to receive post-high school education, but it does not have a continuing responsibility to students who are not making an effort or who have proven incapable.

Educational programs offered by the junior colleges are of a broad nature and constitute a number of educational functions. As summarized in *California Public Junior Colleges*, a bulletin of the State Department of Education, these functions are (1) college and university transfer education, (2) vocational-technical education; (3) general education, (4) guidance, and (5) adult education.

The transfer and the vocational-technical programs are usually easily identified and consist of courses which are part of a two-year curriculum. The subcommittee has found little to question in the content of these classes. Under general education the junior colleges usually offer what is known as a liberal arts education, sometimes leading to an associate in arts or an associate in science degree. This category is much more difficult to define, classes in this category are usually a potpourri. Under this heading are found the following courses which are being offered in junior colleges today:

Home Economics 65: The Modern Hostess (3 units)

The planning and preparation of quick, complete luncheons, breakfasts, dinners, quick cookery procedures, food composition, table decorations, entertaining, serving, and meal planning. Menu and effects for special occasions and holidays.

Music 51A-51B: Co-ordinated Show Band Techniques (1 unit)

A course designed to build the marching band, majorettes, song leaders, and yell leaders into one working unit so that a concordant activity will result. Required of all song leaders and yell leaders. Football games, parades, and rallies will be emphasized.

Art 72A-72B: Plant Form and Design (2 units)

One two-hour lecture per week with group and individual instruction

Prerequisite: None.

Objective. To direct the student's observation and study toward the availability of an inexhaustible store of design material to be found in plant specimens of every name and nature. To develop skill in the arranging of plant forms and accessories.

Content. Demonstrations and lectures illustrating harmonious and unique combinations of plant forms for home decoration. Arrangements designed for general and specific occasions using plant material offered by the different seasons through the year.

Art 70: Ceramics (1 unit)

Three laboratory hours per week

Prerequisite: Permission of instructor.

This course gives one unit of regular junior college credit to general college students.

Home Economics 62: The Modern Chef (2 units)

A practical foods lecture-laboratory designed primarily for men students. Techniques in meat cookery, salad preparation, and pastry making will be emphasized. Meals for special occasions, outdoor cookery, barbecuing of steaks and chickens and special sandwiches will be included during the semester.

Business 21: Business Personality (2 units)

Lecture and demonstrations, with field trips and specialists as lecturers. To assist the student in solving her problems of selecting and caring for a wardrobe suited to her, the occasion, and her income. Study conducted on student's type of figure and personality, determining most becoming personal colors, coiffures, makeup, and carriage.

Fortunately the courses described above are in a minority, but unfortunately they exist. This subcommittee feels these types of classes and programs should be eliminated entirely from the junior colleges. They are unfair to the student because they do not stimulate his mind or provide him with a true basic liberal arts background. They are hardly of a collegiate nature and only depreciate from the excellent education which junior colleges are generally providing. They tend to cheapen the college because an institution which does not direct or enlighten its students beyond their own horizons or which allows them to merely "shop around" is not providing a worthwhile educational program. While education may be life and all education is good, it need not always be formalized and it need not always be taught in a classroom at taxpayers' expense.

The Extended Day

The evening or "extended day" programs of the junior colleges have proven extremely difficult to define and assess. They have caused this subcommittee more difficulty than almost any other item. Another sub-

committee of the Assembly Education Committee has also been investigating this matter. For a fuller discussion of this subject we refer you to the report of the Subcommittee on Adult Education.

Two years ago there were 91,426 full-time students in the junior colleges, 53,592 part-time students, and 155,061 adults (defined as an individual over 21 years of age and taking less than 10 units). The junior colleges graduated only 14,978 students during that year. In 1959-60 the junior colleges had a total enrollment of 311,794. Of this total 90,254 were full-time students (a decline of 1,172 from the previous year) and 221,540 were part-time and adult students.

These figures clearly demonstrate that the majority of the junior college student population is over 21 years of age, is taking less than 10 units of college work, and is generally attending classes at night.

In 1958-59 only 6,269 adult education classes were offered by junior colleges throughout the State. The great majority of the adults attending junior colleges were in "graded" or "credit" classes. Some junior college spokesmen have argued that the great majority of these adults are pursuing work toward A. A. degrees, vocational certificates, and transfer programs. However, other junior college spokesmen have admitted that "the interest and objectives of a number of part-time and adult students who attend junior colleges are somewhat different from those of the full-time students. A much larger percent of the part-time and adult students are interested in vocational-technical curricula or courses designed to expand and improve their vocational proficiency."

Below is a table prepared by the State Department of Education showing the 1958-59 fall-term subject matter enrollments of adults in junior colleges.

<i>Subject areas</i>	<i>Enrollment</i>	<i>Percent</i>
Industrial arts, trade extension, apprenticeship training and agriculture	49,829	21.7
History and social science	34,706	15.2
Business education	31,797	13.8
Mathematics and science	25,023	11.0
English, foreign languages, and speech arts.....	22,927	10.0
Civic education, including forums on current events and foreign affairs, lectures on special topics, problems of the aging, and leadership training	22,403	9.8
Homemaking and parent education.....	14,291	6.2
Fine arts and music	10,530	4.6
Physical education, safety, and health.....	7,415	3.2
Crafts	6,730	2.9
Citizenship and English for the foreign born.....	3,434	1.6
Totals	228,885	100.0

This subcommittee recognizes there are many adults attending evening classes who are working toward degrees or two-year certificates. We highly commend those individuals. Yet, on the basis of the evidence available to this subcommittee, we contend that the vast majority of last year's 221,540 adults in the junior colleges were not attending for these purposes. Rather they were attending only to take one or two particular classes either for self-improvement, for up-

grading on their job, or for an interesting evening away from the television set.

Adult education classes and enrollments in the junior colleges have become so confused and integrated with the regular evening program that it is almost impossible to determine which are adult education classes and which are regular junior college classes. One president of a large Northern California junior college answered questions before this subcommittee regarding his evening program as follows:

Q. In looking at your schedule of extended day classes how can we tell what is a class for an adult and what is a regular junior college class?

A. Well, I could mark them for you if you would like to have me do that.

Q. There is no other way from just looking at the schedule we can tell which are which?

A. No, there isn't. We have one problem caused by recent legislation that says if a teacher does not qualify for a regular credential the class doesn't qualify as an extended day course. Therefore, if you don't have a regular junior college or secondary credential the course becomes a class for adults.

Q. You also have mixed classes—some adults who are just taking one particular course and people in the same class who are taking it for college credit.

A. That is another problem that comes out of legislation regarding credit and noncredit classes. The extended day division should be permitted to use adult teaching credentials without restrictions on out-of-district billing. Noncredit courses and noncredit students should be fully accepted as a regular part of our extended day program and this confusion should be clarified.

Q. You offer a class in upholstery for college credit. I assume you have adults taking this class as a class for adults and that you have adults taking it as regular college credit.

A. Well, that's a class for adults.

Q. That's a class for adults only? But it's a credit class.

A. It's a credit class, but still a class for adults. I think these issues ought to be clarified. I'd like to see a thorough study made of this whole program so that we could have some basic rules that are consistent. At the present time I am completely confused in regards to the problem of noncredit, credit, extended day, classes for adults, and billing the \$300 out-of-district capital outlay fee.

We agree that the question of extended day programs in the junior colleges need a great deal of further study. If a class is an adult education class it should be called such and reported to the State as such. This subcommittee does not wish to take any action which would work a hardship on those adults attending junior colleges at night who are pursuing planned programs leading to degrees or certificates. At the same time, however, the subcommittee does not want to increase assistance for those adults who should be taking classes in adult education. Further, we do not want to see equalization aid nor growth money being apportioned to any junior college for its adult a.d.a. Since the subcommittee, and evidently the junior college people themselves, cannot make the distinction of which adults are which, this subcommittee has no alternative but to recommend that no increased state assistance should be given to the junior colleges for *any* adult a.d.a.

REPORT OF THE
SUBCOMMITTEE ON SPECIAL EDUCATION

MEMBERS OF THE SUBCOMMITTEE

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January 1961

FINDINGS

1. There is a great lack of co-ordination between various state agencies administering programs and services for the handicapped children and adults in California. The lack of co-ordination between state agencies and private organizations is even greater.

2. As a result of this lack of co-ordination many handicapped individuals often find great difficulty in receiving information and assistance.

3. The Governor's Committee for Employment of the Handicapped and the Co-ordinating Council on State Programs for the Blind have proven valuable co-ordinating agencies.

4. No state agency now makes a continuous review of programs and services being offered to the handicapped, in order to determine if any programs are unnecessary or duplicatory.

5. No state agency is giving major attention to orderly and planned growth of programs and services to the handicapped. Programs are often developed by one agency without consulting another agency operating in the same field.

6. Sizeable percentages of teachers of the mentally retarded are teaching with less than standard teaching credentials. Of 2,375 teachers of the educable mentally retarded, 17 percent of these had less than standard teaching credentials. Of 208 teachers of the severely mentally retarded, approximately 30 percent of these were teaching on less than standard teaching credentials.

7. The building of classrooms for the training of severely mentally retarded children has not kept pace with the current demands and needs.

8. Great progress has been made during the past decade in the number of classes offered and the number of children served under the permissive legislation authorizing school districts to offer classes for the severely mentally retarded.

9. There is a critical shortage of teachers in all fields of the education of exceptional children. This is true at both the collegiate and public school level.

10. No public institution of higher education in California offers a doctoral degree in the education of exceptional children.

11. San Francisco State College inaugurated a program for the training of teachers of all types of exceptional children as a result of a special legislative act in 1948. This program has been developed since that time into one of the finest special education departments in the United States.

12. Many school districts offer classes for handicapped individuals and parents of handicapped or mentally retarded children through their adult education programs. These classes provide the parents with training which they could receive in no other way.

RECOMMENDATIONS

1. A Co-ordinating Council on Programs for the Handicapped should be established. It should consist of the directors, or their designated representatives, of the State Departments of Education, Employment, Industrial Relations, Mental Hygiene, Public Health, and Social Welfare.

2. The council should make a continuous review of programs and services being offered to the handicapped in California. The council should co-ordinate and evaluate existing programs.

3. The council should prepare and distribute a descriptive list of the services available to the handicapped and the requirements for obtaining such services

4. The council should give major attention to orderly and planned growth in the field of programs and services to the handicapped.

5. The council should be required to report annually to the Governor and the Legislature on its activities for the past year and to make recommendations regarding any needed or proposed legislation.

6. The council should serve as an advisory body to the various state departments included on the council and to other state and local agencies whenever necessary.

7. San Francisco State College, other state colleges, and the University of California should be encouraged to work co-operatively in providing adequate education in the field of the exceptional child

8. The offering of special classes for the severely mentally retarded in the public school system should continue to be on a permissive basis. Legislation to make the offering of such classes mandatory should not be enacted at this time, however, encouragement should be given to school districts for the voluntary expansion of these programs. Such encouragement should be aimed at the costs of instruction and facilities and the ability of school districts to contract for instruction and facilities of other school districts and/or public and private agencies.

9. The Legislature should authorize a study to be conducted to thoroughly evaluate the "Point 2" program for the severely mentally retarded child. This study should also determine if this program is an appropriate function of the public schools or whether it might not more properly be conducted by some other state or local agency.

10. Adult education classes for the handicapped and/or the parents of the handicapped are proper functions of adult education programs and should be encouraged.

REPORT OF SUBCOMMITTEE

INTRODUCTION

The Subcommittee on Special Education was established to study the programs and services currently being offered by governmental and private agencies for the handicapped children and adults of the State of California; to study the need for revising or increasing these services; and to study the current adequacy of co-ordination of these services.

Assemblywoman Dorothy M. Donahoe was chairman of the subcommittee during the period of June 1959-April 1960. Upon her death, Assemblyman Harold T. Sedgwick was appointed chairman of the subcommittee and he has served in that capacity from April 1960 to the present date.

The subcommittee held two hearings during the interim period. The first hearing was held in San Francisco on November 19, 1959. It was devoted to hearing testimony from representatives of state and federal agencies regarding services currently being offered to the handicapped. The agencies represented at this hearing included Vocational Rehabilitation Services, the United States Office of Vocational Rehabilitation, the State Department of Education; the State Department of Mental Hygiene, the State Department of Public Health; the United States Department of Health, Education and Welfare; the University of California; the California Youth Authority; the State Department of Corrections; the State Department of Social Welfare, the State Department of Motor Vehicles; the State Department of Employment; the State Department of Industrial Relations, and the San Francisco Public Schools.

On May 19, 1960 the subcommittee met in the Medical Center of the University of California at Los Angeles. At this hearing the subcommittee heard testimony from private organizations or associations dealing with handicapped individuals. The agencies represented included: the Los Angeles Welfare Planning Council, the National Rehabilitation Association; the Governor's Committee for Employment of the Handicapped; the California Council for Retarded Children; Aid Retarded Children, Inc.; the John Tracy Clinic; the California Council for Exceptional Children; the Spastic Children's Foundation; Volunteers of America, the California Council of the Blind; the Associated Blind of California, Inc.; the California Tuberculosis and Health Association; the Southern California Region of the American Association on Mental Deficiency; the National Association of Social Workers; the United Cerebral Palsy Association; and the Conference for California's Exceptional and Rehabilitation Needs.

From these two hearings the subcommittee was able to compile a rather complete record of what public and private agencies in California feel are the major needs in offering adequate services to the handicapped, as well as methods which might be used to improve the services already being offered.

THE REPORT

The subcommittee on Special Education has constantly kept in mind that the end result of all services to the handicapped is the individual being served—not the service itself.

Many representatives of both public and private agencies appeared before this subcommittee. Most agencies tend to deal with only one type of handicapped person, i.e. the blind, the retarded and the palsied. Many handicapped people, however, suffer from multiple handicaps. For example, there are blind children who are deaf; deaf children who are palsied; palsied children who are retarded, and retarded children who are blind.

The subcommittee found that agencies have too often limited themselves to dealing in only one particular service. If an individual did not fit into the general classification with which that agency was dealing, then that agency had little inclination to assist the individual. Ironically, the artificial barriers created by segmenting the handicapped only reduce the effectiveness of the services being provided for the benefit of the handicapped individual. Such an approach is uncomfortable for the individual and is an unprofessional way to approach human beings. The subcommittee's real concern has been with meeting the needs of people—as people. It has been concerned with meeting the total needs of all handicapped people.

During the two days of hearings many of the same problems were raised by witness after witness. This report will consist primarily of a brief review of the need and/or inadequacies most often expressed by witnesses before this subcommittee.

The Need for Co-ordination

Above all others, one need stands out from the testimony received by this subcommittee. It is the need for increased co-ordination between agencies, both public and private, which are offering services to the handicapped. Witness after witness testified that co-ordination of services now offered is minimal and in some cases nonexistent. As an illustration, we quote below two excerpts from testimony received by this subcommittee.

“At the present time, there is some duplication of services between the state agencies. We believe this could be reduced to a minimum through the development of a directory of services which would contain specific identification of services available from state agencies as well as volunteer health and welfare agencies. A directory of services would be a long step forward in eliminating the frustration that parents of handicapped children now have because they do not know what services are available or where they are available. The same frustrations exist within the state agencies.”—Mr. W. C. Bradshaw, President United Cerebral Palsy Association of California.

“The complexity of attempting to establish co-ordination and communication between relatively small programs, such as ours [Vocational Rehabilitation Services], and all of the widely separated agencies, in terms of services and interests, is certainly beyond the efforts of any one group of people. I think everyone in our staff would strongly endorse the principle of the establishment of some overall co-ordinating

group, as has already been done in the case of the blind, which is a relatively small segment of the total problem.

"We are looking forward to further . . . extension of vocational rehabilitation to include the so-called independent living services which would bring in a whole new range of problems and relationships with which we presently do not have to concern ourselves . . . We, therefore, have a keen interest in seeing that some form of co-ordination be established, so that the entire burden is not left upon the individual agency"—Dr. Andrew Marrin, Chief, Bureau of Vocational Rehabilitation Service, State Department of Education.

The excerpts above could be duplicated over and over by other witnesses before this subcommittee. It became clear to the subcommittee after two days of hearings that co-ordination among the state agencies offering services to the handicapped is badly needed. This is only a natural development. Within the last decade state services to the handicapped have increased enormously and the number of people utilizing these services has also increased.

In order to best serve the people of California and to obtain the greatest amount of efficiency from the tax dollar we must be certain there is no overlapping or unnecessary duplication of services or facilities. In order to accomplish this, it appears that the time has come to begin co-ordinating the various activities of the state and private agencies.

The most important consideration must, however, be to the individual being served. If we are to adequately meet the needs of handicapped persons and help them to return to society in a useful and productive capacity we must marshal all the forces and assistance available to them. We are obviously not doing this when two or more state agencies operating in the same field do not even know what the other is doing. If state agencies do not know what services are being offered by other state agencies, it is likely that local agencies are even more ill-informed. And where, then, do private agencies or associations fit into this structure? How can private organizations adequately help those individuals who are coming to them for assistance?

Surveys by the subcommittee staff revealed that co-ordination between state agencies often depends solely on personal relationships built up over a period of years between members of various departments. This is hardly an adequate method of co-ordinating activities and services for the handicapped—particularly on as large a scale as that provided by the State of California. A formal organization for co-ordination is needed. It must be a lasting framework which will adequately serve those individuals upon whose behalf everyone is working.

Two co-ordinating bodies which have been highly commended by all the witnesses appearing before this subcommittee are the Co-ordinating Council on State Programs for the Blind and the Governor's Committee for Employment of the Handicapped.

The Governor's Committee for Employment of the Handicapped

The committee was established principally to conduct a year-round, statewide public information and education program to develop a more favorable acceptance of the handicapped in business and industrial

employment. In so doing, the committee co-operates with all groups, public and private, who are interested in employment for the handicapped.

When originally organized in 1947, the committee was primarily composed of federal, state, and county representatives who were charged with the responsibility of educating, rehabilitating, and finding jobs for the handicapped. In 1954, it was expanded to include several interested citizens from trade, industry, labor, the professions, and the general public.

The Governor's committee meets regularly in various cities throughout California to hear the reports and recommendations of local Employ the Handicapped Committees. Committee members also attend many of the local committee meetings throughout the year.

Members of the Governor's committee urge their colleagues and business acquaintances to work through the state agencies in bringing about increased training and employment opportunities for the handicapped. As a result of the committee's support, the Department of Employment and the Vocational Rehabilitation Service report they are able to serve an increasing number of handicapped who seek employment.

Co-ordinating Council on State Programs for the Blind

At its regular session in 1949, the Legislature created an Interim Committee on State Programs for the Adult Blind. Among many other things, the report of this interim committee recommended the establishment of a permanent Co-ordinating Council on State Programs for the Blind. The Legislature enacted such legislation in 1951.

The duties of the council are to meet quarterly, or on call of the chairman, to consider and recommend policies for the improvement of programs and for the co-ordination of functions of the various state departments as they affect the blind; and to report annually and make recommendations to the various state departments and to the Legislature.

The council is composed of the directors of the State Departments of Public Health, Education, and Social Welfare. Serving the council is a Co-ordinating Committee on State Services for the Blind, which serves as the real working committee and which reports to the council at its quarterly meetings. Each agency represented on the council offers different services to the blind. This is a means of bringing together those individuals serving in different capacities to co-ordinate the work which they are performing and the services which they are providing. This council has been able to eliminate any duplication which previously existed between these agencies.

The only question which exists in the mind of the subcommittee is whether the membership of this council is too limited. Shouldn't the representatives of the Departments of Employment and Mental Hygiene, or the private associations offering services to the blind be included in the membership? If it is the total handicapped individual with whom we are concerned, then we must take into account all the needs which he has and all the services which must be provided to fill those needs.

This subcommittee believes that a co-ordination of state programs for the handicapped is of prime importance. Therefore, the subcommittee recommends that a Co-ordinating Council on Programs for the Handicapped be established. This council should consist of the directors, or their designated representatives, of the State Departments of Education, Employment, Industrial Relations, Mental Hygiene, Public Health, and Social Welfare. Representatives of private organizations and associations dealing with the handicapped should be encouraged to attend whenever possible. This council should also actively encourage the creation of an advisory committee consisting of representatives from private organizations who could meet with and advise the state agencies on needed programs as well as the co-ordination of existing ones.

The chairmanship of the council should rotate annually among each of the members and it should meet quarterly in public meetings. The council's functions should include, but not be limited to, the following:

1. The council should make a continuous review of programs and services being offered in California to the handicapped. It should do this in order to avoid unnecessary, outdated, and duplicatory services. It should co-ordinate the activities of existing programs and services.

2. The council should constantly evaluate programs to make certain they are the most useful and efficient means of providing needed services throughout the State.

3. The council should undertake to prepare a descriptive list of the services available to the handicapped and the requirements for obtaining such assistance. This list should include services provided by both private and public agencies. Such a list should have a wide distribution to personnel within state agencies, in field offices of state agencies, and in private organizations. The council should also attempt to communicate as much of this information to the general public as possible.

4. The council should give major attention to orderly and planned growth in the field of programs and services to the handicapped. In so doing, the council should make a determined effort to utilize to their maximum all existing state agencies and services.

5. The council should be required to report each year to the Governor and the Legislature on its activities for the past year and to make recommendations regarding needed or proposed legislation. Whenever possible the council should preview and/or review proposed legislation. It should work closely with the Governor and the Legislature and should serve as a "body of experts."

6. The council should serve as an advisory body to the various state departments included on the council and to other state and local agencies whenever necessary.

The subcommittee feels that a co-ordinating council as outlined above, would be of immeasurable benefit to the people of this State and to the various governmental agencies involved in serving the handicapped people of California.

In making the above recommendation the subcommittee does not envision the creation of a new state agency nor a superstate agency. It does not envision the necessity of hiring any new personnel to staff such a council. It is the subcommittee's feeling that co-ordination is

most vital to those agencies involved and that in order to be most effective those agencies must actively work in co-ordinating their activities with personnel in other state agencies.

The State of California currently offers more programs and services to its handicapped children and adults than most other states in the nation. There is much more, however, which could and must be done. As California's population continues to rapidly expand, the services of the State will be even more heavily burdened than they presently are. If we are to advance in the types and amounts of services offered, then we must marshal and utilize all the available resources of the State. Co-ordination is vital if we are to succeed in the many demands and endeavors facing us. It may very well be the key to success or failure.

The Mentally Retarded

In 1921, school districts were granted legal authority to establish special classes for the less severely retarded. Very few school districts were willing to absorb the costs of such a program, however, and the number of children benefiting from this legislation was negligible. The first real accomplishments materialized some 25 years later.

In 1947, the California Legislature passed many laws concerning special education. One law made mandatory the establishment of classes for educable mentally retarded minors under provisions of the Education Code. This is usually referred to as the Point 1 program. The law applied to (1) educable mentally retarded children of compulsory school age; (2) elementary grades from one to eight, (3) districts with 15 retarded pupils in residence and to county superintendents of schools for pupils residing in districts with less than 15 such pupils.

These provisions were amended in 1949 to make county superintendents responsible in districts with less than 900 a.d.a. The law also made state funds available to reimburse school districts and county superintendents of schools for 75 percent of the excess cost of educating the Point 1 mentally retarded child, not to exceed \$75 per unit of a.d.a. In 1950, this amount was raised to \$150. In 1949, special classes for educable mentally retarded pupils on the high school level were permitted by legislation and were made mandatory in 1956. The 1947 Legislature also made a special appropriation to San Francisco State College to develop a teacher training program in all fields of special education.

In 1951, a program for the severely mentally retarded child, who had previously been excluded from school, was authorized by permissive legislation. This is usually referred to as the Point 2 program. The Education Code provides that special schools and classes may be established by the governing board of elementary, high school, unified school districts, and by county superintendents of schools. A 1957 amendment provides that this should also apply to children who are between five and 21 years of age, and who meet the other prescribed requirements. Excess costs in this program are currently covered up to \$670 per unit of a.d.a., with additional funds up to \$475 provided for transportation costs.

The past 10 years have witnessed a rapid growth in the number of youngsters in special classes for the mentally retarded. The total

enrollment of educable mentally retarded minors (Point 1) in special classes in the elementary and secondary schools in the 10-year period 1949-59 increased from approximately 13,000 to almost 32,000. In 1959-60 there were approximately 35,658 educable mentally retarded children in special classes in the public schools of California.

Within the last 10 years California has made remarkable strides in providing educational facilities and opportunities to children who would have previously been considered only as cases for full-time care institutions and mental hospitals.

The total enrollment in special classes for the severely mentally retarded (Point 2) during the period 1952-59 increased from approximately 376 to 2,000. As of January 15, 1960 there were approximately 2,375 severely mentally retarded children enrolled in 208 special training classes.

The advantages of providing such mandatory training classes for the educable mentally retarded have been clearly proven. The young people thus educated are better able to take their place in the community and achieve a degree of independence and personal dignity which would have been impossible without this public school experience.

The advantages of providing classes for the severely mentally retarded also has great merit. Quoted below is an excerpt from a letter by the director of a special education program in a California school district which maintains a program for the severely mentally retarded.

"I have felt that this program has been very successful in carrying out the objective of a program of this nature, which . . . is to help the child function better in a sheltered environment. The children are able to improve their health habits, self-care, socialization, speech, ability to use their hands, and in general be more helpful around the house and yard through the training offered in this program. I feel that many of them can be trained to work in a sheltered workshop if we had such a workshop in our community . . .

"Another valuable service of this program, we feel, is the help we have been able to give the parents in accepting, understanding, and helping these children . . .

" . . . The money spent on the training of these children is well expended when one thinks of the increased efficiency of these children to take care of themselves and to be helpful to those supervising them as well as the relief and assistance given to the parents.

"I feel that this type of program should continue to be available to those children who are eligible . . . these programs should include only children who can profit from the training. There are many severely retarded children who are too low mentally or too emotionally disturbed to be included in the trainable group and must be considered full custodial as contrasted to the trainable."

At the present time the decision of whether to offer classes for the severely mentally retarded or "trainable" child rests with the local school district. Numerous witnesses urged that these classes should

be made mandatory. A strong argument for this action was made by the California Council for Retarded Children and is repeated, in part, below:

"We maintain that the majority of these trainable children who could benefit greatly by special classes in the public schools are denied the opportunity because many school districts have elected, under this 'permissive' legislation, not to provide the classes. As evidence that this vital need is not being met we submit the following figures: Assuming the total public school enrollment in California is to be 3,000,000 students, the incidence of 'Point 2' children in this number is approximately 0.3 percent or 9,000 children. (According to the State Department of Education the incidence of 'Point 2' mentally retarded in California ranges from 0.23 percent to 0.5 percent of the total school enrollment. Therefore, our use of the 0.3 percent figures is deemed fair, equitable, and on the conservative side.) The most recent figures issued by the Department of Special Education indicate that at the present time [1960] there are approximately 2,350 'Point 2' students actually enrolled in our public schools. Where, then, are the other more than 6,000 handicapped children who fall into this category?

"Many are in their own homes with no public educational opportunity whatsoever. Others are enrolled in the private training-school programs, many times in a makeshift, part-time program supported on a catch-as-catch-can basis by parent groups and interested professional and lay supporters on a volunteer basis. Still others are in residence in one of our four state hospitals for the mentally retarded, at a cost greatly exceeding the public school costs. In many cases, residence in the hospital would not be necessary if this community based public school program were offered. In this case the deprivation of this 'Point 2' child of special educational training at the community level is therefore not only socially and morally wrong, but it is a most unwise and uneconomic use of the taxpayers' money."

The subcommittee feels that the goals outlined in the statement above are commendable and that all local school districts and the State of California should strive to attain them. However, the subcommittee does not, at this time, feel it can responsibly recommend making such classes mandatory in the public school system of California.

As California's population continues to rapidly increase, it becomes more and more difficult to maintain the efficiency and quality of the current programs for the educable mentally retarded. Progress in this field has been made through the use of the current permissive legislation, as shown earlier in this report. While the subcommittee in no way indicates that we must merely remain at the present level, it appears that there are several prerequisites which must be attained if competent and constructive classes for the severely mentally retarded are to be offered.

During the school year 1959-60 there were approximately 2,375 teachers of educable mentally retarded children in the public schools.

Of this number approximately 17 percent had less than the standard credentials to teach such youngsters. During that same year there were 208 teachers of the severely mentally retarded; approximately 30 percent of these were teaching on less than standard teaching credentials. This, incidentally, does not include personnel who have supervisory, consultative, or administrative responsibilities in the operation of special classes for the mentally retarded. Many school administrators told this subcommittee of the great difficulty they have in finding qualified teachers because the available supply is so small. Later in this report recommendations are made to help alleviate this critical shortage, not only for teachers of the mentally retarded, but for teachers of all handicapped children and adults.

The subcommittee also cannot ignore the problem of school housing. Adequate classrooms for special training classes do not now exist in many schools which are currently offering such programs. The building of classrooms in California has continued to be a difficult and unending problem. It is no secret that hundreds of California children are on part-time programs because of a lack of sufficient classroom space. The building of classrooms for the training of mentally retarded children has not kept pace with the current demands and needs. Without adequate facilities, no program as demanding as this one can fully succeed.

The subcommittee believes, however, that encouragement should be given to school districts for the voluntary expansion of the "Point 2" programs. Such encouragement should be aimed at the costs of instruction and facilities, and the ability of school districts to contract for instruction and facilities of other school districts and/or public and private agencies.

The concept of school-home co-operation is the very cornerstone of the curriculum structure as it is currently devised for severely mentally retarded pupils. Many of the skills taught in the classroom must be made automatic through repeated use in real-life situations. The parent, therefore, must play an important educational role.

The subcommittee feels that working with parents of all handicapped children is highly important. It strongly commends those agencies which are working with parents of handicapped children and providing them with a greater understanding of their child, as well as allowing the parent to more adequately help the child to improve himself.

In this connection, the excellent work in parent education being conducted at the John Tracy Clinic in Los Angeles should be noted. The clinic is an educational center for preschool age deaf and hard of hearing children and their parents. The purpose of the clinic is to find, encourage, guide, and train the parents of deaf and hard of hearing children in order to reach and help the children, and to help the parents themselves. The clinic has originated a correspondence course which provides one year of instruction at home. In addition, it offers a six weeks summer session for parents and children living outside the Los Angeles area. The clinic also operates a teacher training program with the University of Southern California.

This type of close co-operation between private agencies and educational institutions is highly commendable. The emphasis upon parent education, while not new, is extremely advantageous. It is not a com-

plete answer, but it should be emphasized by more public and private associations.

Many school districts offer classes through their adult education programs for handicapped individuals, and for parents of handicapped or mentally retarded children. Approximately 5,000 adults (or one-half of 1 percent of the total adult enrollments in the public schools) last year received assistance through these special classes. While this is not a large number, it is significant that school districts are providing such assistance to parents who could receive this type of training and education in no other way. It is the feeling of this subcommittee that these particular types of adult education classes should be commended and encouraged.

A request was made to the subcommittee that the Legislature authorize a study to be conducted which would thoroughly evaluate the "Point 2" program for the mentally retarded. This study should also determine if this program is an appropriate function of the public schools or whether it might not more properly be conducted by some other state or local agency. This is a question which is asked of legislators at almost every session. The subcommittee feels that such a study would be extremely useful. The permissive program for the "Point 2" child was authorized in 1951 and no comprehensive or adequate follow-up study has been conducted by the Legislature since that date. The subcommittee believes that before these provisions of the law are made mandatory a thorough evaluation and study of the current programs should be undertaken and that it should also include any and all possible new approaches to the training and servicing of these particular children in California's society.

The Teacher Shortage

The quality of educational programs and services for exceptional children is measured by the abilities and qualifications of the teachers and administrative personnel who provide such services. Almost every witness appearing before this subcommittee commented on the difficulty of finding qualified teachers trained in the fields of special education.

A study by the State Department of Education, released in January 1960, shows that in the fields where California requires certification (the visually handicapped, the deaf or hard of hearing, speech correction and lip reading, the mentally retarded, and the orthopedically handicapped) there is a critical shortage of teachers on the elementary, junior high, and high school level. Colleges and universities which conduct programs for the training of teachers are also having extreme difficulty in finding qualified personnel to staff the programs at the collegiate level.

While the recruitment of teachers in California is a problem in general, recruitment for programs of special education is a particular problem because this field actually represents a shortage within a shortage. The rate of increase for special services for handicapped youngsters is more than twice the rate of increase in the public school enrollment at large. If schools have problems in securing regular classroom teachers, their problems in securing teachers for the handicapped is doubly difficult.

The number of special education teachers must be rapidly increased. In order to do this, however, there must be an adequate number of college and university professors available to train these teachers. Departments of special education on college and university campuses cannot increase, or in some cases even begin, their training programs without qualified collegiate level instructors. In this connection it should be noted that there is no public institution of higher education in California that offers an advanced graduate degree in the education of exceptional children for students who wish to study beyond the master's degree. If Californians seek doctoral degrees in this field they must go out of the State to obtain them. The subcommittee finds this gap in the curriculum of the University of California unfortunate.

The federal government has recently initiated a fellowship program in the field of mental retardation for the professional training of college and university personnel and for supervisory and administrative personnel in the public schools. California recipients of such fellowships must leave this State in order to pursue their studies beyond the master's degree.

With one of the finest systems of higher education in the United States, California should not be lacking in giving qualified individuals the opportunity to do advanced work in this field. Not only is this a great loss to the student, but it is an even greater loss to the children of California.

During the spring of 1948 San Francisco State College inaugurated, as a result of special legislative act, a program for the training of teachers of all types of exceptional children. In the fall of 1950 the program was expanded to provide graduate work leading to a master's degree with a major in education of exceptional children. San Francisco State College has continued to expand and develop its educational program for teachers of exceptional children. The college has received money from the federal government for the establishment of several research centers connected with the training and educating of individuals in this field.

The current curriculum of San Francisco State College provides for instructional training in the fields of speech and hearing, visually handicapped and the blind, mental retardation, orthopedically handicapped, vocational rehabilitation, etc. The college's facilities and instructional program in the field of special education are considered one of the finest in the United States.

Until the last session of the Legislature it was not possible for state colleges to offer doctoral degrees. The master plan for higher education adopted at the last session, however, authorized the University of California and the state colleges to work jointly to grant doctoral degrees in selected fields when practical. The field of special education is an excellent area for co-operation in providing adequate educational programs. This would eliminate the unnecessary and costly duplication of effort and program in this highly specialized field. It would certainly serve the best interests of the people of the State of California.

REPORT OF THE
SUBCOMMITTEE ON TEACHERS' RETIREMENT

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FINDINGS

1 The rapid increase in the cost of living and other economic conditions have made the present minimum allowance receivable under the State Teachers' Retirement System inadequate

2 Many teachers who retired some years ago with reasonable retirement benefits are now having great difficulty living on those same retirement benefits Some retired teachers are receiving as little as \$1,300 per year or less in retirement benefits

3 Many people are experiencing difficulties in transferring from one retirement system to another Often piecemeal legislation has, in correcting one specific problem, created many others

4 The State Teachers' Retirement System should be treated as one single coverage group and should not be split into smaller segments for specific purposes and particular benefits

5 There appears to be some disagreement and concern over whether the State Teachers' Retirement System should continue to be operated on a funded basis

6 The inclusion in 1959 of death and survivor benefits under the State Teachers' Retirement System has lessened the desire of many teachers for inclusion under social security, although some sentiment for voluntary inclusion still exists

7 Individuals are often hired to advise school districts on educational and noneducational matters not directly related to classroom instruction They are actually in the nature of independent contractors and, in some instances, the purposes of the State Teachers' Retirement Law have been contravened by allowing these individuals to receive retirement benefits under the State Teachers' Retirement System

RECOMMENDATIONS

1. The present minimum allowance receivable under the State Teachers' Retirement System should be increased from the present \$70 per year of service to \$80 per year of service. The provisions of Assembly Bill 2908, introduced at the 1959 General Session of the Legislature, should be approved without further delay.

2. A major and comprehensive study of the State Teachers' Retirement and other state retirement systems should be conducted.

3. Since the State Teachers' Retirement System was designed to provide benefits for individuals directly related to classroom instruction, we recommend that all persons employed on a part-time basis in positions other than for service as teachers and principals of day or evening schools should be excluded from membership and credit in the State Teachers' Retirement System.

REPORT OF SUBCOMMITTEE

INTRODUCTION

During the 1959 Session of the Legislature numerous bills proposing changes in the State Teachers' Retirement System were introduced. Some of these bills were passed by the Legislature and signed into law by the Governor. Several others, however, were deemed controversial or important enough to warrant further study before action on them would or could be wisely taken by the Legislature. They were, therefore, referred to the Assembly Interim Committee on Education.

The Subcommittee on Teachers' Retirement was established to further study the following bills. Assembly Bill 1198 (George Brown), Assembly Bill 1289 (Donahoe), Assembly Bill 1413 (Donahoe), Assembly Bill 1469 (Bee), Assembly Bill 2098 (George Brown), Assembly Bill 2577 (Masterson), and Assembly Bill 2908 (Gaffney).

The Subcommittee on Teachers' Retirement held one hearing on the above mentioned bills in Los Angeles on November 3, 1959. At that time the subcommittee heard testimony from opponents and proponents of the various proposals. Members of the subcommittee were able to have a more complete briefing on the contents and consequences of these bills and an opportunity to more thoroughly question witnesses than they had had in the midst of a busy legislative session.

Although the subcommittee was dealing with specific bills there were basic and general issues that had to be used as a framework against which evaluations and decisions had to be made. The subcommittee always tried to discuss the general proposals of the bills rather than the specific details of them.

A general problem which has arisen is that various retirement systems have been established at various times in various places. Since these systems have been established at different times, various philosophies were adopted upon which they were predicated. The net result of this is that often, in our highly mobile society, a person who wishes to change his occupation or locality finds himself in the problem of adapting one retirement system to another. He finds that the conflict of philosophies has produced specific difficulties for him. The basic philosophy of retirement has thus, oftentimes, had side effects which were not originally intended or anticipated.

In some cases, people have brought these difficulties to the attention of the Legislature with specific bills to solve specific problems of conflict. In so doing, many times additional problems have been created for other groups or individuals covered by retirement systems.

In listening to witnesses and in evaluating their testimony, the subcommittee also tried to keep in mind that everyone sees a problem from his own particular vantage point. Misunderstandings often exist because people are looking at the problem from completely different assumptions and philosophies. Many people, for example, consider retirement as a fringe benefit to their employment. They feel they are,

therefore, entitled to all money contributed to their retirement fund no matter who has contributed the money. Other people and organizations look upon a retirement system as a contract, which must be fulfilled on both sides before anyone has a complete vested interest in any retirement moneys.

The subcommittee did not have enough time or money at its disposal to conduct a thorough and intensive study of the State Teachers' Retirement System or the many problems and questions facing it. However, from the subcommittee's brief work it is apparent that a major and comprehensive study needs to be conducted. For example, should the State Teachers' Retirement System be on an actuarial basis rather than on a funded basis? And if so, how could this best be accomplished? Obviously, this is just one elementary, but basic question which is deserving of further study and elevation.

If further study is undertaken, it is the subcommittee's belief that it should be conducted on a contract basis with an agency outside the Legislature. Such an agency should be fully acquainted with retirement systems and the current financial situation, not only in California, but in the entire nation.

The following report is a synopsis of the testimony presented at the hearing in Los Angeles as it pertains to the specific bills referred for interim study and upon which the subcommittee has based its conclusions, recommendations, and proposed legislation.

ASSEMBLY BILL 1198

Analysis of the Bill

Assembly Bill 1198 deals with the use of funds paid by the teachers of the Los Angeles School District into their local retirement system. It is proposed that an election among the members of the local system be held. If the election shows that a majority of the active employees of the district so desire, the local system shall be abandoned and contributions of the local school district be used to pay the employees' contributions to the State Teachers' Retirement System which are required for past service. The members' contributions to the district would be returned to them.

Leo J. Reynolds, Executive Officer, State Teachers' Retirement System

The State Teachers' Retirement Board questions the propriety of using public funds to pay contributions ordinarily required of the individual. This is contrary to most established retirement practices.

If the Los Angeles School District system were completely wiped out and there was no changeover something would have to be given to the employees to replace the loss of retirement benefits which would be caused by such an abandonment. In this case, however, the employees are going to have better retirement benefits under the State Teachers' Retirement System than they currently have under the Los Angeles System.

There is a difference also in the funding of these two systems. The State System is a partially funded system. Only the members' contributions are reserved. Public contributions are not paid into the State

System until the member retires. Then contributions are paid in amounts required to pay the annual allowances which are not provided by the contributions of the employee.

The Los Angeles System is on a full reserve basis. The employer and the employee pay contributions as to services rendered with the idea that at the member's retirement there will be a fund of money to pay for retirement benefits. The Los Angeles System would not require further contributions from either the public or the employee to meet its obligations. Los Angeles taxpayers have paid into the local system certain contributions to take care of future benefits to the employees.

If the local system is abandoned Los Angeles taxpayers will not be relieved of their obligation to pay future state taxes to take care of the benefits that the State System will pay in the future. If the contributions paid into the local system by Los Angeles taxpayers are used for some purpose other than to pay retirement allowances, the taxpayers of Los Angeles are still going to be liable for their state share of the public costs of teachers' retirement benefits which will be paid in the future. These funds could certainly be properly used by the Los Angeles school board to pay its future contributions to the State. This would result in a saving to the Los Angeles taxpayer in the future.

The abandonment of the local system is a matter for the people in Los Angeles to decide. The teachers who are retiring in Los Angeles today are, however, invariably withdrawing their contributions from the local system and paying them into the State System because they find it has better benefits.

The burden of loss is being shifted from Los Angeles to the State when the local system is abandoned. That shifting already exists because the law provides that if the member desires to withdraw his contributions from the local system he may immediately apply to pay the contribution which he would have paid the State had there been no local system. At that point the obligation is shifted from Los Angeles to the State, so the employee suffers no loss.

W. R. Barker, President, Los Angeles City College Faculty Association

In 1937 the Los Angeles City School District found it was having trouble recruiting teachers because of the inadequacy of the State Teachers' Retirement System. Consequently, the district established what was then an adequate retirement system. What was adequate in 1937, however, is hopelessly out of date today and the city has allowed the local system to get further and further behind the times.

A few years ago the classified employees abandoned their local retirement system and went under the State Employees' Retirement System. It has been said that Assembly Bill 1198, which would return to the teachers the amounts they have contributed to the local system, was unfair to the classified people who received no return. However, the classified people took all the money they contributed, all the money the city had contributed, plus an additional \$17 million contributed by the city to buy themselves into the State Employees' System. Such amounts are not necessary in the case of the teachers because the local system was much more favorable to the certificated people than it was to the classified employees.

I have several suggestions to make which would strengthen the proposal contained in Assembly Bill 1198:

1. No contribution or credited interest of any employee entitled to retirement benefits for years of military service be returned to him for the period during which he made no contribution.

2. The cost of administering the discontinuation of the system should be borne by the local retirement system. Such cost should be borne equally by the teachers and the city.

3. Those teachers already retired shall receive the same benefits from the discontinuation of the system as though they were now members.

4. Young teachers who may have to make payments of up to \$100 to \$200 should have their expenses paid out of the funds now existent in the local retirement system.

People have said that the teachers are having their way fully paid. That statement is misleading. When we came into the local system in 1937, we were told that upon the discontinuance of the system all funds, both city and teacher contributions, would be returned to the teachers. From the teachers' point of view this money has been considered as a part of their salary.

**Hank Zivetz, Executive Secretary, Los Angeles Local 1021,
American Federation of Teachers**

The American Federation of Teachers, Local 1021, has consistently opposed the discontinuation of the Los Angeles Retirement System. We will continue to oppose such a change until the Legislature or the courts reach an agreement on the disposition of the many millions of dollars in the tax contributed pension fund. The special tax rate established for the retirement fund was established as a benefit in lieu of wages in order to attract teachers into the Los Angeles City School District. Local 1021 will resist any dissolution of the local system without a firm commitment that the teachers have a vested interest in this pension fund. The legal basis for vested interest has been established time and again in employer-contributed retirement systems in private industry.

Lloyd Lafot, Representative for the Los Angeles Chamber of Commerce

If the teachers of the Los Angeles School District wish to withdraw from the local retirement system and join the State System, they are free under the present law to do so upon retirement. To provide that the teachers' cost of buying into the State System be financed from the reserve in the local system, which has been raised from taxes to pay the taxpayers' share of the cost of retirement of school employees, and to refund to the teachers entering the State System their own contributions, is completely indefensible.

For almost five years, Los Angeles teachers have had the option of retiring under the State System and for the last three years all of those eligible for retirement have chosen to do so because the benefits are more attractive. In making this transfer, however, their own contributions have been used to buy into the State System.

Both systems have recognized the principle of sharing costs by employer and employee. The only legitimate use of the taxpayers'

contributions in the reserve fund is for the payment of the employees' share of the costs of retirement. Refunding the employees' contributions violates the fundamental principle of the whole plan.

Until the local system is dissolved, annual tax levies will continue to build its reserves even higher. It becomes increasingly important to the taxpayers of the Los Angeles City School District that any legislation affecting the disposition of the assets in the local reserve fund be used only for the purpose for which they were raised—to pay the taxpayers' share of retirement costs.

**Robert E. McKay, Governmental Relations Executive,
California Teachers' Association**

The California Teachers' Association opposed the principle behind Assembly Bill 1198. We feel the members should make up from their own resources any deficit which may exist, if and when they transfer from the local to the State System. It would be difficult to justify the use of publicly raised funds to pay the members' contribution and then make a refund to the member of the money he had contributed. This violates one of the basic principles which the CTA believes should exist in any retirement system. It should be a participating system in which the members and the employing agency share equally in the cost of paying for retirement.

Max Benton, Schools Consultant, California Taxpayers' Association

This bill is the result of events growing out of 1955 legislation concerning procedures for the dissolution of the Los Angeles School District Retirement System. Noncertificated employees voted to withdraw from the local system and became members of the State Employees' Retirement System. Certificated employees who are members of both the State Teachers' Retirement System and the district system, by their vote, prevented the discontinuance of the local system.

Local property taxes are still levied to maintain the district system even though teachers no longer are choosing to use it for retirement. Los Angeles taxpayers thus have an added tax burden to finance contributions, not only to the local system which now is unneeded, but to the State System as well. At the present time there is a reserve in the District Retirement Fund, after allowing for obligations, of approximately \$85,000,000.

The California Taxpayers' Association is opposed to this legislation because it places a disproportionate share of retirement costs on the taxpayer. This proposal would utilize tax accumulations in the local system to pay the teachers' personal obligation to the State System.

The California Taxpayers' Association does favor legislation to make possible the dissolution of this surplus retirement system with the approval of the teacher members. While surplus tax money in the local system should be used for taxpayer benefit in the event of dissolution, proper teacher interests must be safeguarded. Future legislation might well guarantee that no teacher receive a lesser benefit under the State System than he would have received under the district system. Each teacher's accumulated contributions, including interest, should be used to settle his individual obligation to the State System, but in the event these contributions are inadequate, they should be supplemented from

accumulated tax-financed reserves. The excess tax-derived reserves should be used to pay the Los Angeles School Districts' future tax obligations to the State System. This would use the retirement reserves for the purpose for which they were originally levied.

*Jack P. Crowther, Associate Superintendent,
Los Angeles City School District*

The State Teachers' Retirement System law provides for fixing rates of contributions for all members of the system. Under this bill the Los Angeles School District's teachers would be given special treatment. Assembly Bill 1198 would also give to these persons, as compared to persons withdrawing from the district system in the past, the right to have their debt to the State System paid from local public reserves and to receive the refund of their own accumulated contributions. Under the Los Angeles Retirement Law, this public portion is applied to a member's benefit only if he meets certain local requirements. To give it to him when he becomes a full member of the State System grants two benefits for the same service and taxes the public twice for the same purpose.

This legislation also contemplates that the district system shall pay certain contributions for individuals who transfer to the State System. For retirement purposes, such contributions, it is assumed, would have to be considered as contributions, by the members, but for tax purposes they probably would have to be considered and administered separately. This would create considerable confusion and burden for the State System and the individual members concerned.

[NOTE: A question was raised at the hearing as to who actually had a vested interest in the moneys in the Los Angeles City School District's Retirement Fund. The subcommittee obtained a legislative counsel's opinion on this question. The opinion (No. 4340) states that the exact interest which members of the Los Angeles District Retirement Salary Plan have in the funds of that system defies precise legal definition because the courts have never categorically defined such interest. The opinion concludes, however, that a member of the Los Angeles District Retirement Salary Plan has an "interest" in his contributions to the extent that he is entitled to have the contributions returned to him upon the termination of his employment or membership in the system. Regarding public contributions, the legislative counsel finds that the courts have recognized to an extent an "interest" by the members of a retirement system in the "pension fund" thereof. The decisions of the courts imply that the members of the retirement system have some form of "interest" in the funds of the system.]

ASSEMBLY BILL 1289

Analysis of the Bill

This bill proposed that certificated employees in the office of the county superintendent of schools, who receive a salary from both the county schools service fund and the county general fund, shall have the right to elect membership in either the State Teachers' Retirement System or the County Retirement System. It further provided that any such employee who is already a member of either of such systems may elect to transfer his membership to the other system. It also provided that the accumulated contributions of both the employee and the employer previously made to the original system shall be transferred to that system in which the employee elects to become a member.

Leo J. Reynolds, Executive Officer, State Teachers' Retirement System

When a proposal calls for a transfer of employer contributions, very grievous problems are presented. The Teachers' Retirement System is not on a reserve basis so far as public contributions are concerned. Therefore, there have been no contributions paid to this system on behalf of any employee. It would be impossible for the State System to transfer any employer contributions to the county system when an employee was transferring from the State System to the latter. Although most of the county systems are on a reserve basis, it is doubtful whether there are any employer contributions in the county retirement fund which could be allocated to an individual employee.

We see no necessity for the bill because a certificated employee of a county superintendent's office already has the right to become a member of the State System and to receive credit for service rendered in that capacity. Possibly there needs to be an amendment of the county employees' retirement law which would permit a certificated employee of the county superintendent, who receives a part of his salary from the county general fund, to elect to be excluded from the county system. If the law permitted such an exclusion, and the member elected to be so excluded, he would automatically become a member of the State System. I am certain employees' retirement systems would not prohibit persons who receive all or part of their salary from the school service fund from being members of the county system.

ASSEMBLY BILL 1413***Analysis of the Bill***

This bill provides that the governing board of any school district, with the approval of the county superintendent of schools, may establish a position or positions with titles not listed in the Education Code, but which could locally require certification documents, as certificated positions for the purposes of inclusion in and credit under the State Teachers' Retirement System.

Leo J. Reynolds, Executive Officer, State Teachers' Retirement System

The State Teachers' Retirement System is primarily intended to provide retirement benefits to persons employed in teaching positions. All other persons employed in administering or supervising educational programs in the public schools and required by law to hold credentials are also included in the system. There are many other administrative and supervisory positions in school districts where the duties are not of an educational nature. Currently in these latter positions the incumbents are not required to hold credentials and, therefore, have not been members of the State Teachers' Retirement System. Assembly Bill 1413 proposes that such individuals can be classed as certificated employees if the local governing board, with the approval of the county superintendent, requires the incumbents to hold credentials.

This will create an intolerable situation. It could mean that one employee may be classed as certificated while another employee in the same district and performing the same services may be classed as noncertificated.

The State General Fund provides the major portion of the public cost of retirement benefits. As the result of this proposed legislation the State would be assuming obligations to pay retirement benefits of persons who are not employed in a purely educational capacity. Currently, noncertificated employees are members of the State Employees' Retirement System under contract between that system and the separate districts, and the local districts provide the entire public cost of the retirement allowances arising from noncertificated service. The only advantage in this particular legislation would lie with the employing district. Any shift of employees to the State Teachers' Retirement System would result in the State having to assume a larger liability from the General Fund.

From the standpoint of the eventual retirement allowances to individual employees it is not material as to which retirement system the member contributes and under which he receives credit for his services. The two systems provide for reciprocal provisions, so that if a certificated employee assumes a noncertificated position in a school district and becomes a member of the State Employees' Retirement System he has a full vesting of his interest under the State Teachers' Retirement System for the service credited thereunder. When he retires he receives benefits from the two separate systems, but the aggregate of the two benefits is approximately equal to what the person would have received under one system alone had all of his service been credited under that one system.

**Richard C. Bartlett, Executive Director, California
School Employees' Association**

The Education Code provides for the issuance of certificates and credentials for certain positions within the educational field. Positions other than those listed do not require certification qualifications. However, there are certain positions not requiring certification qualifications, the salary of which is sufficient enough to be attractive to both classified and certificated personnel. For example, the positions of business manager, assistant business manager, administrative assistant, supervisors of maintenance and operations, of transportation, of cafeterias, etc. The California School Employees' Association believes these should not be certificated positions.

The problem is to retain the position as a part of the classified service, but at the same time to make the position available to the most qualified individual within the system whether that person be classified or certificated. The trend seems to be to employ certificated personnel in these positions and then attempt to permit the certificated employee to bring with him the benefits and job security enjoyed as a certificated employee rather than accepting all the benefits available to him under the classified system. As a result of this situation, many attempts have been made to provide the retention of such employees in the State Teachers' Retirement System and also to provide them with retention of their certificated status while being employed in a classified position.

The only objective that can be attained through requiring certification qualifications of other than professional educational positions is to restrict that position to a group of employees who may or may not be qualified to fill such a position.

We recommend that a suitable section be included in the Education Code which would specifically provide that a governing board, a county superintendent of schools, or any other governing entity of a public educational institution be prohibited from listing certification qualifications as a prerequisite for the employment of any person in a position not specifically requiring certification qualifications by the Education Code.

**Robert E. McKay, Governmental Relations Executive,
California Teachers' Association**

This bill permits local determination of whether a given class of employment should or should not be listed in the certificated service for purposes of retirement.

All certificated persons in the public school system should be included under the State Teachers' Retirement System, but the determination as to certification requirements for various positions should and must be made at the State level. If we allow local districts to decide which positions will or will not be certificated we will have enormous deviations between districts.

A major revision of the California credential system should be before the Legislature in 1961. It would be unwise at this time to make the changes proposed by this legislation because they may be obviated by basic revisions in the credential structure.

ASSEMBLY BILL 1469

Analysis of the Bill

This bill would permit business managers, assistant business managers, administrative assistants, or co-ordinators, who hold either teachers' certificates or supervisory administrative credentials, to elect to become members of the State Teachers' Retirement System.

Leo J. Reynolds, Executive Officer, State Teachers' Retirement System

It is questionable whether it would be proper to give credit under the State Teachers' Retirement System for noneducational services. The State provides the major portion of the public contributions for services credited under the State Teachers' Retirement System, while the local district pays the public contributions for services credited as the result of noncertificated employment.

ASSEMBLY BILL 2098

Analysis of the Bill

This bill would permit a local school district to cover its teachers by social security, the coverage being optional for present teachers but, by federal law, all future teachers of the district would be mandatorily covered.

Leo J. Reynolds, Executive Officer, State Teachers' Retirement System

It is my understanding that the request for social security coverage of teachers came primarily from young fathers who wanted to protect their families with the death benefits provided by social security. Since this protection was provided by the 1959 Legislature (Education Code Sections 13838, 14256, 14258, 14259 and 14260), I presume there is now little or no interest among California teachers for legislation such as this.

Hank Zivetz, Vice President, California State Federation of Teachers

We favor the principle behind Assembly Bill 2098 which would extend to other school districts the tenuous privilege of adding social security coverage to the State Teachers' Retirement System on an *individual and voluntary basis*

There are many teachers in all school districts for whom social security coverage would afford increased protection and retirement benefits. It is unfair to prohibit their participation in the social security program because of the opposition of others.

**Robert E. McKay, Governmental Relations Executive,
California Teachers' Association**

The only major benefit which was not provided under the State Teachers' Retirement System, but was available under social security, was that of survivor benefits. That benefit was added to the State System at the last session of the Legislature.

The California Teachers' Association polled its members and found them overwhelmingly opposed to social security coverage. This bill would in effect, divide the members of the State System into two groups for purposes of social security protection. It is not practical for either public agencies or members to contribute into two systems. The percentage that members now contribute to retirement is sizeable. They do not want and cannot afford to contribute to two systems anymore than the State can afford to do so.

ASSEMBLY BILL 2557***Analysis of the Bill***

This bill provided that school districts shall be required to pay one-half of the contributions to the State Teachers' Retirement System currently required of the members, up to a maximum of one-half of the contributions required for the first \$10,000 of annual salary. It provided that local school boards might elect to pay one-half of the contributions due on account of salaries in excess of \$10,000. It further provided for the collection of a special tax for this purpose.

Leo J. Reynolds, Executive Officer, State Teachers' Retirement System

The retirement law currently provides for member contributions which, on the average, will provide for one-half of the cost of the eventual retirement benefit. This is a provision which is common to both the State Employees' and the Teachers' Retirement Systems and is fairly prevalent in all public systems.

To require the school districts of California to pay one-half of the employees' contributions would result in requiring the local districts to pay between 35 and 40 million additional dollars annually from local tax funds.

If it is the desire of the Legislature to change the provisions and require the employee to pay less than one-half of the cost of the eventual retirement allowance, the Legislature should arrive at the percentage to be paid by the teacher. Then the law could be changed to reduce the rate to be paid by the individual.

Since local school districts must operate on limited local tax funds, the net result will be that the State itself will be required to pay these additional costs, whether it is in the form of a direct appropriation to the retirement system or an increase in the apportionment to local districts.

Hank Zivetz, Vice President, California State Federation of Teachers

Once public employment offered many advantages over private industry. Most of these advantages have now disappeared in the face of all inclusive collective bargaining contracts. The retirement contribution required of the teacher, together with the deduction for taxes and health insurance, appreciably reduces the teacher's already shrunken paycheck. We therefore favor the proposal contained in Assembly Bill 2557.

**Robert E. McKay, Governmental Relations Executive,
California Teachers' Association**

The sponsors of this proposal indicate it is an attempt to add a fringe benefit to those already accruing to teachers. However, the majority of all school districts have been forced by changing economic conditions to go to the people and get authorizations to exceed the statutory maximum tax rates. This bill really provides for an automatic override tax. A local school board may decide it wishes to pay one-half of the members' contribution. That sum would be put in the district budget and would become a part of an override tax, although the district might have turned down such a tax for current operating costs.

If teachers deserve better salaries and more benefits, then it should be done uniformly by other means. If this were to be done on a district by district basis you would have some districts that might choose to do this and others which would not. If it is the desire of the Legislature and, financially feasible, it should be done uniformly statewide. It should apply to all members of the system.

ASSEMBLY BILL 2908

Analysis of the Bill

Assembly Bill 2908 calls for an increase in the basis of computing minimum allowances for retired teachers. Currently, benefits to retired teachers are based on a minimum of \$70 per year of service, discounted actuarially if the person retired at less than age 60. Under the proposal the minimum would become \$80, or an increase of about 14 1/2 percent.

This bill would benefit about 7,250 retired teachers. The increased cost to the State would be approximately \$1,900,000 for the first year. This would require an increase in the General Fund appropriation of this amount.

Leo J. Reynolds, Executive Officer, State Teachers' Retirement System

This proposal has followed the historic method of increasing benefits to retired teachers. It would increase the benefits of about one-third of the retired teachers and would be applicable generally to persons receiving lower monthly payments. It does not solve the whole problem, but it is probably the best method of increasing the lower pay-

ments at a minimum cost. To give a flat increase to all retired teachers would not only require more money, but it would be giving increases to people who are receiving \$300-\$500 a month in benefits. With money scarce, this is the most equitable way of raising the monthly payments of those who are receiving very little and providing a ceiling under which no future retired person will fall.

*Robert E. McKay, Governmental Relations Executive,
California Teachers' Association*

The California Teachers' Association has approved this bill because we recognize that economic conditions have made the present minimum allowances inadequate. We regretted that the financial situation at the 1959 General Session did not allow the Legislature to take this step. Recognizing there is a sizeable expenditure involved, we still believe this is a warranted and necessary expenditure.

*Mrs. Lutie Gray, Representative, Los Angeles Division, California
Retired Teachers' Association, and Guy Jaggard, President,
California Retired Teachers' Association*

There are actually two groups of retired teachers in California today. One group has their retirement based on salary. Most of them have retired recently at high salaries and, therefore, have a high retirement—anywhere from \$300 to \$1,000 a month.

The second group of teachers retired some years ago with low salaries and their retirement is based on service or number of years taught. The retirement salary for many of these teachers is \$175 a month or less. They are the last of the pioneer teachers of California. There are many teachers who retired when salaries were in the neighborhood of \$2,500 a year. With only one-half of that as their retirement they now receive about \$1,300 a year, which is extremely difficult to live on.

The economic changes in the last 15 years have placed these people in a situation where they cannot help themselves. No matter how it strains the Treasury we are going to have to do something to meet our obligations to these people who were such fine public servants.

PART-TIME SCHOOL CONSULTANTS

Another matter was brought to the attention of the subcommittee at its hearing in Los Angeles by Mr. Leo J. Reynolds, executive officer of the State Teachers' Retirement System. This matter had to do with a particular problem which has arisen in connection with the administration of the State Teachers' Retirement System.

Upon retirement a teacher is entitled to receive an allowance based on the following factors:

1. *Years of Credited Service.* The member receives credit for a year of service if he completes ten-twelfths of his normal assignment. For a classroom teacher, who serves between the opening of school in September and the close of the term in the late spring, a year of service is credited if he serves for ten-twelfths of those days which fall in the interim. There are normally about 177 days of school in the term, so the law provides that a year of service will be credited an individual employed on this basis who serves for 145 days or more. An administrator, whose assignment may call for as much as 12 months of service

within a fiscal year, receives credit for a year of service if he completes ten-twelfths of a more elongated tour of duty.

2. *Age at Retirement* For purposes of this discussion the age at retirement is of no importance. Normally benefits are based on age 60, and the formula provides that at that age the person will receive a benefit of one-sixtieth of his "final compensation" for each year of credited service. For retirement at less than age 60 the total benefit is discounted to provide the actuarial equivalent at the lesser age. For retirement at ages 60 to 65 and over, the benefits are increased actuarially to provide for the more abbreviated life expectancy of the older person.

3. *Final Compensation* Under the law "final compensation" is defined as the average of the annual salary earnable during the three highest consecutive years. The earnable salary is considered to be the salary payable to a person who is employed on a full-time basis in the particular category of employment. For a school-term employee, that is, one who serves between the opening and close of school in the respective September and June, it is the salary which would be payable to that person if he were employed full time during the interim. For the administrator, who is employed on a more elongated assignment, it is the salary payable for such longer tour of duty.

The particular problem which the State Teachers' Retirement staff is encountering deals with administrative personnel who serve on less than a half-time basis. These individuals are educators by profession, but are not associated with the public school systems as a principal employment. Two cases submitted by Mr. Reynolds to the subcommittee will serve as illustrations of the problem.

"The first case deals with a person who we are told is employed as director of research for a school district. (A copy of the letter of appointment is printed below.)

"You have been re-employed as Director of Research for the 1957-58 school year on a part-time basis.

"Your services will be scheduled on the basis of one-half day, or four hours, per week for 41 weeks during the school year of 1957-58. Your salary will be at the rate of \$110 per day, or \$55 per half day. The total amount to be paid during 1957-58 will be not less than \$2,250. The above salary rate is based upon a 177-day school year.

"Your service report to the State Teachers' Retirement System, of which you are a member, will record the above rate and will report not less than 20 full days for the year. The proportion of a full year of service earned by you in this district in 1957-58 will accordingly be reported as not less than 20/145, 145 being the minimum number of days which qualifies as full-time service for a certificated employee."

The letter of appointment shows that this person is to serve on a half-day per week basis (four hours per week) for 41 weeks during the school year. The salary paid the individual was \$110 per day, or \$55 per half day. The total amount which was paid during the year of 1957-58 was \$2,255 for the equivalent of 20½ days of service.

"The second case with which we are familiar deals with a person who we are told is employed on a one-quarter-time basis in a school office at an annual salary of \$2,400. In this particular case we were asked whether it would make any difference whether the person was shown as being employed for 24 days in a school year at a sal-

ary of \$100 per day, or on a one-quarter-time basis for an earned salary of \$2,400. The answer was that if the person was employed on a one-quarter-time basis, he would, in effect, receive credit for 30 percent of a year, whereas, if employed for 24 days in the year, he would receive credit for only 7 percent of a year. In this case it was advantageous for the individual to be employed for one-quarter time for all but three years of his service, and in any given three years to be employed at the rate of \$100 per day for 24 days. The differences in the annual allowances would be considerable. Thirty years of service on a one-quarter-time basis would be the equivalent of nine years of service at three-tenths of a year for 30 years (0.3×30 years), and that amount of service applied to a final compensation of \$9,600 (average salary based on a one-quarter-time earned salary of \$2,400) would at age 60 produce an annual allowance of \$1,440. If, on the other hand, the person were employed for 27 years on a one-quarter-time basis, and three years on the basis of 24 days of service per year, the accumulated service would amount to a total of 8 4/3 years. In that event, however, the employing school office might report that the person during three years was employed on a basis where he would serve throughout the entire year, and as a consequence have an annual compensation of around \$26,000 if employed on a full-time basis. If these factors were applied, the individual would have an annual benefit at age 60 of \$3,654, or 250 percent more on the same service, salary and contributions."

It becomes apparent that these persons are more in the nature of independent contractors than employees of the district. In many cases the work which they perform for the district is not all performed on the premises. The nature of the services permits a local administrator to juggle the assignments and appointments in such a way that the purposes of the retirement law are contravened.

From the State's standpoint, employments of this nature are very difficult to control, both in terms of time involved and the salary which might be considered as earnable if the person were employed on a full-time basis. The retirement law was designed primarily to provide for retirement allowances of classroom teachers. It is questionable to try providing retirement allowances for persons who are called in to advise the district on what may or may not be educational matters, but which are not directly related to classroom instruction.

Only one hard-and-fast solution has been proposed which would effectively alleviate this condition. This would be to exclude from membership and credit in the State Teachers' Retirement System all persons employed on a part-time basis in positions other than for service as teachers and principals of day or evening schools. While this type of exclusion will also apply to persons such as dentists, doctors, and other professional part-time personnel, it will in the long run remove some inequities which have been caused by the formula which became applicable in 1956. The state system has provided an excellent retirement program for the classroom teachers of California. Nothing should be done which would dilute that system from carrying out its primary purpose.

REPORT OF THE
SUBCOMMITTEE ON GUIDANCE SCHOOLS

MEMBERS OF THE SUBCOMMITTEE

CARL A. BRITSCHGI, *Chairman*

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January 1961

FINDINGS

1 In California, as well as the rest of the nation, the rate of juvenile delinquency has been steadily increasing since the immediate postwar period. The juvenile delinquent has become a major problem for state and local officials throughout the nation.

2 There are youths, not yet legally defined as delinquents, who have become definite problems in the schools. Their pattern of classroom disturbance, consistent truancy, and disturbed home environment is causing school officials grave concern.

3. Assembly Bill 1267 proposes an early identification of these youths and offers assistance in helping them adjust their behavior. Expert opinion holds, however, that no effective method of identifying the delinquent or the predelinquent has been found.

4 Juvenile delinquency is a community problem arising out of the failure of the delinquent's environment. It is not exclusively a problem for the schools.

5 Reliable data regarding the cost of the guidance school as proposed by Assembly Bill 1267 has not been presented to this subcommittee. However, information presented indicates that these schools would be expensive.

6 Because of the expense of these schools, the areas most in need of relief from the predelinquent problem could not maintain such schools without considerable state aid.

RECOMMENDATIONS

1. Assembly Bill 1267 proposes only one solution to the problem of the predelinquent. Other solutions must be explored before this far-reaching legislation is approved by the Legislature. The Subcommittee on Guidance Schools cannot favorably recommend AB 1267 without further data and exploration of other solutions.

2. Should the Legislature desire to pursue this problem further, a statewide study should be authorized, utilizing the knowledge and assistance of state, local and private agencies.

REPORT OF SUBCOMMITTEE

INTRODUCTION

One of the most alarming elements of the modern scene is the juvenile delinquent. Daily, newspapers carry lurid accounts of violent crimes, often completely without motivation, involving youths from all economic levels of society. It would be encouraging to think that these cases are exaggerations and do not represent a true picture of the incidence of juvenile delinquency. However, statistics published by law enforcement agencies confirm the growing and ever increasing danger of juvenile delinquency.

A comparison of the 1958 and 1959 editions of the report, *Delinquency and Probation in California*, published by the Attorney General's office shows the steady increase in juvenile delinquency which has been a characteristic of the California crime scene for many years. Though adult crime decreased 5 percent from 1957 to 1958, juvenile delinquency increased 4 percent. This report, the most complete report on crime in California, documents the gravity of the situation.

Growing public concern regarding juvenile delinquency and the increasingly large number of delinquent acts occurring within the schools have caused a considerable amount of research and debate to be devoted to the prevention of juvenile delinquency. This has often taken the form of working with youngsters who show severe behavior problems, but who have not yet committed a crime. It is this segment of the school population which is so often a disturbing element within the school, and which can best benefit from early help.

One of the most significant efforts along these lines has been in progress in San Mateo County for many years. For over 10 years a continuing study of children with behavior problems has been conducted by officials of the schools, the probation department, and other agencies concerned with the welfare and education of children. Out of this extensive study has come the proposal of the guidance school as embodied in Assembly Bill 1267.

The Subcommittee on Guidance Schools held a hearing on this proposed legislation in Redwood City on October 23, 1959. This report is based primarily on the findings of that hearing.

PURPOSES OF THE LEGISLATION

In preparing the legislation, the members of the study group from San Mateo thought of the guidance school as a place of treatment for the child with a behavior problem, not as a detention home. In a guidance school, the child whose environment had failed him would be placed in a new environment so that he might adjust before he became a delinquent.

Working on the environment of the child committed to a guidance school is an important part of the whole concept of helping the pre-delinquent youth. Workers in the field of juvenile crime and correction

have long noted that many youngsters make an excellent adjustment while in custody but often regress when they are returned to the family. Education of the parents as well as the child is thought to be very important, because a healthy home environment will assist the child in developing his newer, more acceptable patterns of behavior.

One proponent of Assembly Bill 1267 compared this function of working with the parents of a child to the operation of a public health agency in the instance of a typhoid epidemic. In such an instance, the victim is removed from the environment which has bred the typhoid contagion. While the victim is hospitalized, the health officials attempt to locate the source of contagion, whether it be a polluted supply of water, milk or some other source.

Welfare and youth officials often experience difficulty in working with the parents of delinquent youth. Under the provisions of Assembly Bill 1267, the legislation authorizing the establishment of guidance schools, the consent of the parents is necessary before a youth is admitted to the guidance school. Proponents of the legislation have reasoned that parents granting consent would be interested in the welfare of their children and would make a strong effort to adjust their own lives, in order to improve the home environment.

Proponents of the guidance schools strongly believe that these schools will answer an important and widespread need. Every school district, no matter how small, enrolls students who could possibly benefit from a guidance school as defined in this legislation. Guidance schools were designed for those pupils who cause problems which school administrators and teachers must meet every day. In San Francisco, the estimate of possible candidates for these schools runs as high as 2,500, or twice the number of delinquent youth. While the greatest utility of the guidance school would be for the large district, the guidance school legislation was developed to attempt to solve problems which are common to all districts.

As proposed by the authors of Assembly Bill 1267, the guidance school would be a place where the student with severe behavior problems would have time to adjust to more acceptable patterns of behavior. A guidance school, in the opinion of the proponents, would prevent many youngsters from becoming confirmed delinquents and would remove severe behavior problems from the regular classroom, thus providing a more desirable learning situation for the rest of the class.

PROVISIONS OF ASSEMBLY BILL 1267

Assembly Bill 1267 provides for a completely permissive approach to the establishment of a guidance school. Under the terms of the bill, a local district *may* establish such a school. In addition, the permissive nature of the bill is carried through in a parental consent provision, providing that the consent of the parent or guardian of each pupil must be obtained before the child is admitted to the school.

Minors between the ages of 8 and 17 are eligible for admission to a guidance school under the provisions of the legislation. Minors resident in the district are, of course, eligible for admission. Out-of-district students may be accepted on a contract basis.

An admissions board is provided to prevent hasty or unjust commitment to the guidance school. Assembly Bill 1267 provides that the admissions board shall include in its membership a representative of the county probation department, the county welfare department, one qualified lay person and two other qualified persons selected by the governing board, but not members of the governing board. Ex officio members of the admissions board shall be: the principal of each guidance school, the superintendent of the school district maintaining the guidance school, and a representative of the State Department of Education. For a school or schools maintained by a county, the county superintendent shall replace the school district superintendent. Other qualified persons may be consulted for their advice regarding the admissions program.

The function of the admissions board is to screen all applicants for admission to the guidance school. This screening would not occur until the consent of the parent or guardian had been obtained, since this is the first major requirement which must be met before admission to a guidance school. After the parental consent had been obtained, the admissions board would decide if the student in question could benefit from residence in the guidance school. If the child is admitted, the admissions board would conduct a continuing review of the case to ascertain the progress, or lack of progress, in each case. A minor shall remain in the guidance school for the term specified in the admittance order, unless the admissions board should recommend otherwise. At least two reviews of that admittance order shall be made by the admissions board each year. Upon completing each review, the admissions board may recommend the continuance or termination of the admission order.

Parents or guardians of the minors would contract with the district to meet the average costs, or portion thereof, of maintaining a student within the school, these costs to include meals and a reasonable sum for lodging. Should parents be adjudged to be incapable of paying any portion of the cost, the pupil may be admitted and the cost paid by the district from any funds available for the maintenance and operation of the school.

For the purposes of maintaining and operating a guidance school, a school district shall provide for a 5-cent override tax per \$100 of assessed valuation of taxable property in the district.

SUMMARY

One theme which has been prominent throughout the committee's investigation into this subject has been the plea for early identification of potential juvenile delinquents so that these youngsters, with the proper treatment and environment, can avoid the pitfalls of juvenile delinquency. The dangers of ignoring this need are only too apparent in the unhappy experience of New York City where incidents of physical violence committed on fellow schoolmates and teachers by juvenile delinquents recently became a national scandal.

Probably the most tragic aftermath of this New York situation is to be found in the records of the police stations in the New York area. Since many of the youngsters who were expelled were at the age, or

near the age, where they could quit school, hundreds of them never returned to school. After the school district had lost contact with them, these youngsters began slowly to reappear in arrests, the tragic result of the failure of the school, the church, the home and the community to deal effectively with the signs of delinquency which manifested themselves in the behavior of these youth.

Assembly Bill 1267 suggests a method of working with these youngsters. It is designed to prevent the type of situation which developed in New York from developing in California. Under the guidance school plan, these youngsters would be removed from their school, just as they were in New York. They would then be sent to guidance schools designed to work with their problems, instead of being allowed to roam the streets as they were in New York.

The approach outlined in Assembly Bill 1267 is, in the opinion of this subcommittee, premature. There is little evidence that an effective and accurate method of diagnosing "pre delinquency" exists. One worker in the field of child welfare told the subcommittee that she even had trouble defining the term, not to mention diagnosing it. Mrs. Lucille Kennedy, Chief of the Division of Child Welfare, State Department of Social Welfare, stated: "... who is pre delinquent? Until a youngster is delinquent it is pretty hard to say what was the 'pre' stage of it. . . ."

In a recent report on juvenile delinquency to Congress by the Department of Health, Education and Welfare regarding juvenile delinquency, considerable attention is paid to the prevention of juvenile delinquency. This report notes that delinquency prevention, as a body of scientific knowledge, is in its infancy and no panacea for the prevention of juvenile delinquency has been found. In evaluating three predictive methods for identifying potential delinquents the report states that these measures are capable of identifying groups from which the majority of delinquents will come, but that they are not capable of identifying individual pre delinquents from these groups.

There are, no doubt, certain signs and patterns which social and welfare workers can identify from a series of case studies. But, as Mrs. Kennedy stated, these are merely signs. When these warning signs are applied to the individual case (for instance, diagnosing a case for possible admission to a guidance school), considerable difficulty is experienced. Until more is known in this field, until the diagnostic procedure can be termed completely accurate, it would seem highly improper to take a child from the home and place him in a guidance school.

One other problem with this legislation is that it distorts the true nature of juvenile delinquency. It would tempt one to believe that juvenile delinquency is wholly a problem for the schools, and that the identification and treatment of pre delinquency should be the exclusive sphere of the schools. Research has shown that any number of institutions (including the home, church, and school) have important influences on the development of a child's behavior and personality. The school is just one of these influences, and it is unreasonable to expect that the school should assume a dominant and exclusive role in the field of delinquency prevention.

Juvenile delinquency and its prevention is a community problem, and should be handled by the pooling of community sources. Every agency which has experience with youth should be called upon in this necessary attack on juvenile delinquency. Departments of welfare and probation, church clubs, school organizations, and recreation groups are just a few of the organizations which can make important contributions to the solution of this problem.

Assembly Bill 1267 charts a course for the schools which is new and without precedent. While the schools have long dealt with juvenile delinquents and behavior problems, they have not operated detention homes nor performed duties which normally would fall within the province of the courts and the Youth Authority. Because the guidance school proposal is a new course for the schools, an element of compromise has been inserted into the proposal and has weakened the entire proposal. This element of compromise can be most readily seen in the parental consent provision.

By virtue of the parental consent provision, no youngster can be admitted to a guidance school without the permission of his parents or guardians. This provision is a necessary safeguard, in the opinion of this subcommittee, and relieves the schools of a function which would seem to be primarily judicial in nature. It does produce, however, a major flaw in the guidance school proposal. If a child is clearly disturbing classes and showing definite signs of predelinquency, it would seem that he would need help whether his parents were willing to give their consent or not. Because of this necessary safeguard (necessary because of the unprecedented function which would be assigned to the schools), large numbers of predelinquent youth would be unaffected by the passage of this legislation. By assigning this function to the schools an impossible situation is created. By requiring parental consent, a small percentage of the predelinquents are helped. On the other hand, complete coverage of youngsters can only be achieved by the highly doubtful provision of mandatory commitment.

A solution to this problem can be found in the fact that juvenile delinquency is a community problem. Within the community approach, the schools would have a most important function, for they would be the community agency with the most constant and continuing contact with children. The role of the schools would be pre-eminent in diagnosing cases of possible delinquency. Once this diagnosis had been performed, however, the other community agencies would enter the field to assist in combatting the problem of juvenile delinquency. An effective program to prevent juvenile delinquency could be effected without the schools ever assuming the onerous task of detention.

During the 1957 Session of the Legislature, the Protective Services for Children Act was passed. This act stated "The board of supervisors of any county may establish such programs as are deemed necessary to provide protective services for children so as to insure that the rights or physical, mental or moral welfare of children are not violated or threatened by their present circumstances or environment." The act defined these protective services as social casework and guidance.

Because of this act, the welfare department or the probation department in a county may seek out families which are in need of help

whether they are on relief or in need of financial assistance or not. This program is new and is just getting under way in many communities, but already there is an agency to which the school may make referrals once the diagnosis of a problem has been made in the school.

One definite problem with the guidance schools proposal and with the testimony of the proponents of the legislation is that there is little definition of the kinds of students who would be expected to be admitted to a guidance school. All are agreed that the guidance school would be for the disturbed child who shows signs of possible delinquency in his behavior, but after this point has been reached there is little amplification. There are many degrees of disturbance; a whole spectrum of behavior patterns are encompassed in the testimony of the proponents. Will the guidance school accept severely disturbed children? These are questions which must be answered before this legislation can be considered to be thoroughly drafted. Without the answers, it would seem impossible to hire a properly qualified staff, for the staff must meet the needs of the types of students who will be admitted.

Testimony received by this subcommittee has stressed the extremely expensive elements of the guidance school proposal. To be thoroughly effective and to achieve the goals for which it was established, the guidance school would have to be designed to give a high degree of individual guidance and instruction to the pupil. A study reported to the subcommittee by Mr. Frank Corwin, Director of Special Services, Redwood City Schools, suggested the following outline for a guidance school:

1. A full program of course offerings paralleling the programs of the regular public schools.
2. A farm or ranch type situation for the closest possible integration of work experiences and education.
3. A program of counseling and guidance considerably more extensive than normally found in the public schools because of the special needs of the students of the guidance school.
4. Use of the "club" or "squad" ideas which would limit the class size to an optimum of 10 or 12.
5. An optimum enrollment, for the entire school, of approximately 70 to 80.

Although costs were not included in the study reported by Mr. Corwin, it is obvious that such a program would be extremely expensive. Large numbers of teachers and counselors would be needed, and the cost for the large district might well be prohibitive. John Roberts, Coordinator of Child Welfare, San Francisco Schools, estimated that, considering the optimum enrollment to be in the range of 80 to 100 students per school, San Francisco would need 25 such schools to handle the students defined as predelinquent.

Other witnesses strongly suggested schools segregated on the basis of sex, thus introducing one other costly element into the guidance school program. These witnesses pointed out that the guidance school would be a residence school with a student body ranging in age from eight to 17. Under these circumstances a separate school seemed advisable.

Proponents of the guidance schools are not in accord on this question, even though it must be answered before attention is given to financing the guidance school program.

The subcommittee is grateful to Mr R E Arnold, Director of Attendance and Juvenile Services, Office of the County Superintendent of Schools, Santa Clara County, for presenting cost estimates based on the experience of a boys' ranch in Santa Clara County. These estimates indicated that the five-cent override tax provided for in Assembly Bill 1267 would have been sufficient for the operating expenses of such a school, but that some problem would have been encountered regarding capital outlay. However, these estimates were derived from the experience of one school in one county. There is no reason to believe that the figures would be valid for Los Angeles or San Francisco counties where many guidance schools would be necessary.

It must be concluded that the question of financing of guidance schools has not been answered at this time. Because of the sketchy nature of the information presented to this subcommittee, the subcommittee cannot recommend so far-reaching and apparently costly a program without more reliable data.

REPORT OF THE
SUBCOMMITTEE ON
COUNTY SUPERINTENDENTS OF SCHOOLS

MEMBERS OF THE SUBCOMMITTEE

CARLOS BEE, *Chairman*

LOU A CUSANOVICH
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January 1961

FINDINGS

1. There appears to be a need for reorganization of the office of county superintendent so that the office may better meet the needs of education in California.

2. Several large school districts in California have informed the subcommittee that they are facing difficult problems in their relationship with the offices of the county superintendents. However, these problems do not appear to be pressing enough to warrant legislative consideration separately from the larger problem of reorganization of the office of county superintendent.

3. Assembly Bills 2392, 2393 and 2394 offer partial solutions to the problems of the large school districts, however, they ignore the problems of the small school districts. The problems raised by this legislation might delay a more realistic organization of the office of county superintendent.

RECOMMENDATIONS

1. A complete study of the organization of the office of county superintendent should be undertaken to determine if a more efficient and useful intermediate level of school administration should be established.

2 No legislative action should be taken on Assembly Bills 2392, 2393 and 2394, or legislation of similar intent, until the findings of the above study are communicated to the Legislature

REPORT OF SUBCOMMITTEE

INTRODUCTION

Assembly Bills 2392, 2393 and 2394 were introduced in the 1959 Session of the Legislature by Assemblyman George Crawford of San Diego. These bills, introduced at the request of the San Diego Unified School District, were referred to the Assembly Interim Education Committee for further study. As a result of this assignment, the Subcommittee on County Superintendents was established.

Briefly, these measures proposed to achieve the following.

1. Exempt school districts having 60,000 a d a or more from the requirement that their certificated personnel should register their credentials with the office of the county superintendent of schools. (AB 2392)

2. Exempt school districts having 60,000 a d a or more from filing their budgets with, or subjecting them to examination, change, or approval of the county superintendent of schools. (AB 2393)

3. Exempt school districts having 60,000 a d a or more from filing orders with the county superintendent of schools or subjecting such orders to his approval. (AB 2394)

The subcommittee held a hearing on this proposed legislation in the board room of the San Diego County Water Authority on October 7, 1959. The following report is a synopsis of the testimony presented at that hearing, upon which the subcommittee has based its conclusions and recommendations.

ARGUMENTS OF THE PROPONENTS

Many of the provisions now in the Education Code were designed for a period in California history when the job of educating our youth was considerably smaller than it is today. As a consequence, these provisions are outmoded and no longer meet the needs of California education. These provisions were designed for a period when nearly all school districts were small and lacked competent staffs to perform many duties for themselves. A review by the county superintendent provided a useful check on the financial operations of the district. Often errors found by such reviews saved the taxpayers large sums of money.

Times in California, however, have changed drastically in the last few years. Now many large school districts can afford to hire the skilled staffs necessary to perform their own review. The large district staffs closely check the budgets and warrants of the district and eliminate the errors formerly found during the review by the county superintendent. The review by the county superintendent has become an unnecessary duplication of the work of the district staff. Abolition of these unnecessary functions now performed by the county superintendent

ent would result in savings to the taxpayers of the large districts and the State of California.

This is not to say, however, that only the large districts need a more independent status. Many smaller districts are performing equally excellent work, so that the figure of 60,000 is as a breaking point is not a magic number. Many smaller and medium sized districts, such as the Santa Ana City School District, use the most modern methods in their accounting procedures. Deserving districts, no matter what their size, should receive the benefits of these reforms.

In the Los Angeles city schools, and in other districts, the original handling of the warrant and the review by the county superintendent are handled in one operation. Warrants are not sent to the central office of the county superintendent, but instead they are approved by a deputy who works in the school district office. Because this review by the county superintendent has become so cursory, it would seem logical to take the next step and give the districts the independence they now lack in name only.

Every agency of government is subject to an audit performed by an outside agency. The large districts should not be exceptions. Most districts already hire outside accounting firms to conduct independent audits of the district books. It would be quite simple for the Legislature to specify the procedures to be followed by these auditors so that a completely satisfactory and authentic audit would be obtained. Indeed, the resulting audit would be more accurate because the independent auditor would be working with all the pertinent documents. At present, the county superintendent generally takes the word of the district regarding these documents which are rarely sent to the central office of the county superintendent.

Improvement in the handling of warrants within the various school districts could be effected if the large districts were given the independent status contemplated in this proposed legislation. The office of the county superintendent must process the warrants of both the large and small school districts. Consequently, approximately the same processing machines and equipment must be used by all business offices within the county. In Alameda County this meant, for example, that the Oakland Unified School District could not adopt the most modern business machines because the county superintendent could not also install such modern equipment. He could not install such equipment because he also must serve the small districts which could not afford to purchase such equipment. If the reforms contemplated in this legislation were in effect, the large districts would be free to solve their complex problems in the most efficient and modern way they could afford.

The large districts are in need of immediate relief from the jurisdiction of the county superintendent so that they may streamline procedures and avoid excessive duplication. It may be true that a complete re-examination of the structure of education in California is necessary, but this must not obscure the fact that the large districts need immediate relief. The passage of this legislation would in no way preclude the undertaking of a comprehensive study of the need for reorganization of the structure of public education in California.

ARGUMENTS OF THE OPPONENTS

Both the California Association of School Administrators and the California Association of County School Superintendents have recognized the need for reorganization of educational administration at the county level. The California Association of School Administrators began a study of the subject in 1957. The County School Superintendents Association has voted to request the Legislature to initiate a study of reorganizing these county offices into a new intermediate level of administration. Both of these organizations, however, cautioned against any piecemeal approach to the problem. They noted that the full implications of the establishment of new independent districts must be evaluated and understood before action is taken.

Unfortunately, these bills constitute a piecemeal approach to the problem and leave many questions unanswered. There is no doubt that some of the present county units are unrealistic. County boundaries are political boundaries and were established as such. Too often they bear little relationship to the educational needs of an area. To merely shift functions from one office to another, possibly hiring a new staff to do the work of the existing experienced staff, will not fully solve the problem of the large districts and may compound those of the small.

A considerable amount of skill is required in the preparation of school district budgets. The offices of the county superintendents have highly trained specialists to provide invaluable service to the school districts in the preparation of their budgets. The work of these skilled technicians results in increased efficiency. One county superintendent recently noted that his office discovered errors exceeding \$725,000 in the budget of one large school district.

An equally valid argument can be made for the approval of warrants and orders by the county superintendent. Errors have been found and are continuing to be found by the various superintendents. This indicates a continuing need for review by the county superintendents. If the review function of the county superintendents is removed, the review must still be performed by someone, most likely the State. If the State assumes this function, a valued and historic local function will be removed from local control.

One final fallacy of this legislation should be noted. The figure of 60,000 a day is scarcely a magic number, indeed, it seems quite arbitrary. Many districts of 2,000 a day or less are doing a better job in the areas of certification, budgets, payrolls and warrants than some of the larger districts. There seems to be no reason to grant a measure of independence to the large district without granting the same measure of independence to some of the deserving small districts.

These bills, with their piecemeal approach, do not provide the answers to the problems they profess to solve. To avoid confusion, a sweeping study of the whole structure of education in California is needed. To build soundly, the whole structure must be renovated and not repaired piece by piece.

SUMMARY

A provision establishing the office of county superintendent was written into the California Constitution of 1879. Since that time the

county superintendents have become an increasingly important element in the administration of education in California.

At first, the duties of the county superintendents were largely clerical. Financial support came entirely from taxes raised on the county level. By 1919, however, the State was contributing to the support of the duties of the county superintendents. With this state aid came a steadily increasing workload, including the supervision of instruction. Today the county superintendents form a vital link in the administrative chain of California education.

A majority of the witnesses before this subcommittee expressed the opinion that a reform of the office of the county superintendent is needed to enable the superintendents to deal more effectively with present-day educational problems. County officials appearing before the subcommittee noted the complaints of the large districts regarding the county superintendents' offices, and stated they wished to work with the large districts in solving their mutual problems.

In their present form, these bills are incomplete and their intent obscure. Many vital questions should be answered before the Legislature takes action on this legislation. For example, does the legislation propose that payroll orders (warrants) be reviewed only by district officials? At present, Education Code Section 21109, which is not repealed by this legislation, requires the county auditor to examine warrants of districts. If this legislation were passed, credentials of certificated personnel in the districts not affected by this legislation would continue to be filed in the office of the county superintendent, while those from the affected districts would, of necessity, be filed with the county auditor. This is no way to simplify procedures for the district, nor for the State Department of Education.

Testimony of the proponents of this legislation has left other questions unanswered. If the duties of the county superintendent specified in this legislation are abolished with respect to districts of 60,000 a.d.a. or over, what will be the status of other duties of the county superintendent which are derived or inferred from the duties to be abolished by this legislation? These duties would include responsibilities pertaining to special district funds and district reserve funds. Also, the legislation does not make clear the procedure to be followed with respect to the issuance, approval, and allowance of district orders of the newly independent districts.

It is the opinion of this subcommittee that consideration must be given to reorganization of the office of county superintendent. In saying this, the subcommittee does not express a lack of confidence in the county superintendents, but rather acknowledges the vital role of these officials. A reorganization of the office of the county superintendent would undoubtedly further strengthen the ability of the county superintendents to deal with current problems of education.

Assembly Bills 2392, 2393 and 2394 suggest partial and short-range solutions which would benefit the large districts, but which do not address themselves to the major problem of the adequacy of the intermediate level of school administration. This subcommittee, therefore, advises that further study is needed before legislative action is taken on Assembly Bills 2392, 2393 and 2394 or other legislation of similar intent.

REPORTS ON
HOUSE RESOLUTIONS

January 1961

REPORTS ON HOUSE RESOLUTIONS

The following House Resolutions were referred for interim study to this committee at the 1959 or 1960 sessions of the Legislature: House Resolution 108 (1959), House Resolution 335 (1959), House Resolution 345 (1959), House Resolution 357 (1959), House Resolution 22 (1960), and House Resolution 76 (1960).

House Resolution 22 has been considered by the Subcommittee on Higher Education. House Resolution 108 has been considered in connection with the study by the Subcommittee on Adult Education. House Resolution 345 has been considered by the Subcommittee on Guidance Schools.

Brief resumes on House Resolutions 76, 335 and 357 follow this introduction. The committee staff has prepared the resumes on these resolutions, no hearings were held regarding them. No findings or recommendations are made by the committee on these particular resolutions. These resumes have been included in this report as information and source documents for whatever action the Legislature may determine.

HOUSE RESOLUTION NO. 76

"Federal Aid to Education"

House Resolution 76 was introduced in the 1960 Session of the Legislature by Assemblyman Carl A. Britschgi. This resolution directed the Assembly Interim Committee on Education "to undertake a comprehensive study of all aspects of federal assistance now provided for support of the public school system in California and the effects of such assistance upon the financial needs of local agencies administering the public schools."

There was neither time nor funds available for the Assembly Interim Education Committee to adequately carry out a study as far-reaching as that directed by House Resolution 76. Consequently, the committee felt it would be best to limit its study to a factual documentation of the following items:

1. The amounts of moneys now being received from the federal government for assistance to education in California.
2. The types of programs for which federal moneys are received.
3. The general qualifications and provisions by which such federal moneys are allocated and received.

A request to this effect was sent to the California State Department of Education. Mr. Collier McDermion, field representative in school administration, prepared a report for the committee answering the questions outlined above. Since this report was so complete and enlightening, excerpts of it are given below at some length.

The committee hopes that this information may prove useful as a source document. Should the Legislature desire to fully study this subject during the next interim period the material published below will serve as a basis from which a more complete study of this subject may be made.

THE REPORT

The concept of federal aid to education is a much broader one than is commonly supposed. Certain aspects of federal aid (mainly, National Defense Education Act, Public Laws 874 and 815, and Forest Reserve Acts) have received most of the attention, and thus, many people think of federal aid only in the terms and the provisions of these few acts. Actually, federal aid covers 137 separate programs employing several different methods for distributing funds for education. These methods of distribution have been adapted to the kinds of aids and to the purposes for which Congress provided the funds, and vary as outlined in the specific sections of federal acts which provide for the authorization, appropriation, and expenditures of funds. Nine separate methods or combination of methods of distribution of federal funds are employed. They may be classified as follows:

1. Allotted on the basis of land areas
2. Distributed in proportion to population figures
3. Awarded to the states as flat grants
4. Given on condition that matching funds are provided from state and local revenues.
5. Provided as the cost of an educational program or of operating the school
6. Apportioned to meet a federal obligation, such as payments in lieu of taxes on federally owned property.
7. Allocated as equalization aid to provide greater assistance to the financially weaker areas.
8. Paid to cover the cost of tuition and of other educational expenses of individuals.
9. Granted in accordance with contracts for services on research programs in various colleges and universities.

TABLE 1—1957-58

Amount of Money California Received Under the Several Acts Administered by the Department of Health, Education, and Welfare	
Support of the land grant colleges	\$175,599
Aid to federally affected areas—	
Public Law 874	16,107,775
Public Law 815	15,551,247
Library services	40,000
Vocational education below college grade level	1,874,140
American printing house for the blind	17,634
Education of public health personnel	69,245
Federal surplus property—	
Personal property	20,063,823
Real property	687,058
Vocational rehabilitation	2,071,732

TABLE 2
Summary of Acts Administered Under the Control of
the Department of Agriculture

Agricultural experiment stations	\$623,881
Co-operative agricultural extension service	1,200,868
School lunch program (national school lunch act)—	
Cash distribution	4,312,871
Commodity distribution	8,560,555
Special school milk program	5,412,000

TABLE 3
Summary of Federal Funds Expended Under Acts Administered by the Veterans
Administration for the Education of Beneficiaries

Vocational rehabilitation—Public Laws 16 and 894	\$1,812,628
Education and training—	
Public Law 550	69,560,543
Public Law 346	602,268
Educational assistance for war orphans—Public Law 634	225,968

TABLE 4
Summary of Federal Assistance for Educational Purposes Provided
Through Other Federal Offices and Agencies

Federal civil defense administration	\$32,086
National science foundation	2,924,287
Other federal offices and agencies	19,000

TABLE 5
Summary of Federal Funds for Education (by Agency)

Funds administered by the Department of Health, Education, and Welfare	\$56,658,053
Funds administered by the U. S. Department of Agriculture	20,170,175
Funds for the education of veterans	72,210,407
Other federal funds for education	2,975,373

In addition to the several acts reported above, there are some educational programs which are national in scope that do not have a reporting on the amount of assistance allocated for any one particular state. Examples are the appropriations for federal military schools and academies, and the U. S. Office of Education fellowship and educational exchange programs.

In addition to a consideration of methods of distribution and the amounts involved, the purposes of distribution are significant. These purposes are as varied as the methods, but are generally classified according to general or special purpose. Both general and special aids were approved in early legislation, but in the years which have followed those first grants, Congress has given more attention to special aids. Grade levels of the educational programs which have been assisted by federal funds may also be noted.

The earliest grants of land were for the establishment of common schools. Later, grants were made for the establishment of colleges. Beginning in 1917, funds were provided for vocational education in the secondary grades and for some years after 1933, emergency funds were provided for various levels of education, including nursery, kindergarten, elementary, secondary, higher and adult education. Also, since 1935, substantial amounts have been allocated for school lunches in the elementary and secondary schools.

Federal Forest Reserve Funds

The Federal Forest Reserve Act requires that 25 percent of all moneys received during any fiscal year from each national forest shall be paid by the U.S. Treasury to the state in which such national forest is situated, to be expended as the state legislature may prescribe for the benefit of the public schools. Fifty percent of the moneys received from the U.S. Forest Reserve Fund is apportioned to the county forest reserve school fund of the several counties of the state for the benefit of the schools. During the fiscal year 1957-58, California's schools shared \$2,062,299.57 from the Forest Reserve Fund. Most of this money was disbursed to 40 counties of the state, 10 counties receiving the larger portion.

There are various criteria upon which a school district is or is not eligible to receive federal aid under the several acts shown above. There follows a listing of the various acts showing the qualification provisions with which compliance must be had to insure eligibility.

Land Grant Colleges

The fundamental purpose of the Morrill Act was to insure the development in each state of at least one college adapted to the educational needs of those engaged in agriculture and industry. Institutions established or designated to receive federal assistance under this act are generally known as land grant colleges and universities. Grants to the states of 30,000 acres of land or the equivalent in script for each representative and each senator were authorized by the Morrill Act. State legislatures were expected to provide sites and essential buildings and to make additional appropriations for necessary operating expenses. The provision of the act requires that moneys derived from the sale of the land in each state shall constitute a perpetual and irreducible fund, the income from which is for the support of its land grant colleges and universities. In 1890, additional funds were provided in an initial appropriation of \$15,000 for each state or territory, with an increase of \$1,000 each year over the preceding year for 10 years, after which time the annual appropriation was to be \$25,000.

School Support in Federally Affected Areas—Public Laws 874 and 815

Reductions in taxable valuations, due to the federal purchase of property and increases in enrollments arising from federal activities, have continued to burden certain communities in financing public school services. Basically, these laws recognize three categories of children for whom the federal government assumes partial responsibility by providing funds for educational services. These groups may be classified as "A," "B," and "C." The "A" children are those whose parents live *and* work on federal property. The "B" children are those whose parents live *or* work on federal property. The "C" children are those whose parents have moved to an area because of federal contract activity, but who do not work *or* live on federal property.

Specific formulas for use in determining the amount of money school districts are entitled to receive under Public Laws 874 and 815 are included in the federal legislation. These formulas are based upon the number of children in the three categories and the rate per child to be paid from federal funds. "A" children justify federal allocations to the extent of the full local contribution rate per child, and "B" chil-

children are included at half this rate. Payments for "C" children are limited to the actual deficit in local operating revenues, but may not exceed the pupil rate for each federally connected pupil.

Eligibility is limited to school districts that have the required percent of federally connected pupils in attendance. Local contribution rates are calculated for each participating district on the basis of current school expenditures in comparable communities in the same state. The pupils in California connected to federally owned property eligible under Public Law 874 are found in 444 of California's 1,721 school districts. These 444 districts are located in 39 of the State's 58 counties. The average daily attendance of the federally affected pupils totals 219,425.

Public Law 815 (School Construction)

This act was designed to assist local school districts in erecting necessary school facilities to house enrollment increases brought about by the enrollment of children whose parents were employed in federally related enterprises. The requirements for eligibility and criteria for determining federal allocations under Public Law 815 are similar to those of Public Law 874. Eligibility is based upon the increase in membership of federally connected children and the rate per pupil in each state is computed in terms of the average per pupil cost of constructing the school facilities in that state. Amounts authorized are computed in accordance with the formula based upon varying percentage payments for "A," "B," and "C" classification children. Funds approved for projects cannot exceed the amount needed to provide school facilities for the number of federally connected pupils or the number of pupils who otherwise would have no schoolhousing, whichever is smaller.

Library Services

Public Law 597, passed in 1956, is known as the Library Services Act. This act authorizes an appropriation of \$7,500,000 annually for five years for grants to the states for the extension improvement of public library services to the estimated 27,000,000 persons in the rural areas without such service. The rural area, as defined by this act, is any place of 10,000 population or less, according to the latest United States census. Funds allotted to the states on this rural population basis are matched by the states on the basis of the per capita income. To remain eligible, the state must maintain its expenditures for all public library services at least at the same level as in 1956.

Vocational Education of Less Than College Grade

Federal assistance for vocational education under the college grade level was authorized by the Smith-Hughes Act of 1917. Allotments to the states under the vocational education acts are made in the proportions which the state populations bear to the total population of the United States. The act also provides a minimum allotment of \$10,000 annually to each state for each of three purposes: salaries for teachers of agricultural subjects; salaries for teachers in trade, home economics, and industrial subjects; and a sum for the training of teachers of vocational subjects. The act also appropriates additional sums of \$27,000, \$50,000, and \$90,000, respectively, or as much thereof as may be needed to guarantee the basic programs. Each state, in order to participate in

the benefits of this act, has been required to accept by an act of its legislature the provisions of the federal act to appoint the state treasurer as custodian of the federal appropriations and to designate or create a State Board for Vocational Education. In addition to the parent Smith-Hughes Vocational Act and its subsequent acts, is the National Defense Education Act

This act provides annual appropriations for the further development of vocational education. It makes available funds for administration, supervision, teacher training, vocational instruction and guidance, establishing programs for apprentices, and for the purchase or rent of equipment and the purchase of supplies for vocational instruction.

Maximum amounts which may be appropriated and allotted to the states and territories for each field of vocational education are also authorized by this act. These include (1) \$10 million for vocational agriculture allotted to states on the basis of the ratio between their farm population and the total farm population of the United States; (2) \$8 million for home economics to be allotted on the basis of rural population; (3) \$8 million for trade and industrial education allotted on the basis of nonfarm population; (4) \$2.5 million for vocational education in distributive occupations on a basis of total population; and (5) \$375,000 as the basis of the extent of the fisheries trades and distributive occupations

No state shall receive less than \$40,000 per year for the first three fields of vocational education, nor less than \$15,000 for the fourth one.

American Printing House for the Blind

The American Printing House for the Blind is a national, nonprofit institution. Its primary purpose is to supply educational books, materials, and tangible apparatus for the blind for schools and classes operating in all the states and territories. The first act of sponsorship by the federal government was established through the act of 1879. The original appropriation called for \$10,000 per year. This increased to a maximum of \$410,000 in August 1956. However, only \$240,000 of the full authorization was appropriated for the 1956-57 school year and \$338,000 for 1957-58. Allotments of materials for the blind purchased from the American Printing House are made to the states on the basis of allocations determined in relation to the number of blind students.

Education of Public Health Personnel

Programs of education for public health personnel stem from the enactment of Title VI of the Federal Social Security Act in 1936. In each state, the selection of personnel for sponsored training from the professional or technically trained ranks is left to the discretion of the state health officer. Training is provided for physicians, dentists, nurses, laboratory workers, sanitation personnel, and other persons who are, or are to be employed in official state, county, or local health programs. Personnel receiving sponsored training must fall into one of the three following pay and allowance criteria.

1. Those who receive stipends instead of regularly established salaries.

2. Those who receive salaries, but have been relieved of their regular duties for the training period
3. Those for whom only tuition and travel expenses are paid.

Federal Surplus Property

The enactment of Public Law 152 in June 1949, repealed many of the enactments of earlier laws pertaining to the disposal of surplus property. In 1955, Congress enacted Public Law 61, which amended the Federal Property Administrative Services Act to provide for the donation of certain classifications of property in the Defense Department which prior to this time had been classified as nondonable by virtue of their being placed in stock fund accounts. Under this law, surplus property must be made available for allocation and donation to nonprofit, tax-exempt school systems, colleges, universities, hospitals, clinics, medical institutions, health centers, and tax-supported school systems, before it can be offered for sale to the general public.

In addition, surplus personal property may also be donated to eligible civil defense units. Approximately 85 percent of the supplies made available have originated in the military agencies within the Department of Defense. Property determined by the Department of Health, Education, and Welfare to be usable and necessary for educational, public health, or civil defense purposes is allocated to the established state agencies for surplus property for donation to eligible institutions within the respective states.

Surplus Real Property Congressional enactments have authorized the sale or lease of real property to educational institutions if an important need exists. Such property may vary from large installations that are complete with buildings and all utilities to single buildings or small areas of land, with or without improvements. Transfers of real property are made to schools with restrictions requiring educational utilization varying from 5 to 20 years. The fair value of the property at the time of transfer is paid by these institutions, partly in cash and partly in public benefits which accrue through the utilization. Public benefits are predetermined by the program use and may justify full 100 percent discount. Total fair value of federal surplus property (personal) received by California 1946-47 to 1953-54 amounted to \$117,235,-413.20.

Vocational Rehabilitation

Vocational rehabilitation provisions stem from a 1920 federal law which approved federal appropriation allotments to the states on the basis of total population. In order to receive its share of federal funds, each state was required to appropriate at least an equal amount of state money. In 1943 the Barden-LaFollette Act was passed, which expanded the scope of the program and changed the method of financing the service. States were reimbursed for 100 percent of necessary expenditures in accordance with the approved state plan for administration, guidance, and placement, and 50 percent of the cost of the other services enumerated in the act.

In 1954 the passage of the Vocational Rehabilitation Act allowed a great expansion of vocational rehabilitation services throughout the nation. Federal funds under this 1954 act are allotted to the states on

the basis of population weighted by per capita income, with provision for a floor to insure that no state's allotment is less than the 1954 level of operation. In order to earn the floor, state funds must equal 1954 state funds. The rest of the support allotment is earned at rates related to the fiscal capacity of the state. After 1959 the matching requirements for the floor are to be adjusted 25 percent a year, so that by 1963 the entire support allotment will be earned at rates related to the fiscal capacity of the state.

ACTS ADMINISTERED UNDER THE CONTROL OF THE DEPARTMENT OF AGRICULTURE

Agricultural Experiment Stations

Since 1888 federal aid has been available for the operation of state agricultural experiment stations. These stations are operated chiefly as units of the land grant colleges of agriculture and mechanic arts. Federal funds have been provided by several congressional acts. In 1955 legislation was enacted that prescribed that the amount any state may be entitled to receive in any year for conduct of agricultural research shall be the amount received in fiscal year 1955, plus such additional amounts as each state may be authorized to receive under the formula contained in that act. Under this formula, any amounts in addition to those made available in 1955 are distributed as follows: 20 percent of the total allotted equally to each state; 26 percent allotted on the basis of relative rural population; 26 percent allotted on the basis of relative farm population. All of this 72 percent must be matched in full from funds of nonfederal origin.

Cooperative Agricultural Extension Service

In 1953 Congress passed Public Law 83 which amended the Smith-Lever Act of 1914 and consolidated it with nine other acts related to extension work. Appropriations for educational work in marketing extension service are allotted to the states on the basis of specific project proposals which must be approved by the Department of Education and must be matched in full by nonfederal funds.

School Lunch Program (National School Lunch Act)

Public Law 396 was approved in June 1946. The purpose of the act was to safeguard the health and well-being of the nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food. Each state educational agency, in accordance with the act, received an apportionment of funds based upon the number of children from 5 to 17 years of age, and upon variations in per capita income and disbursed these funds to schools for school lunch services. The formula provides in the act an allocation of proportionately larger amounts of money to the financially weaker states.

The National School Lunch Act authorizes the purchase and distribution of foods to schools, as well as the distribution of funds. This distribution of foods includes surplus goods acquired under price support and surplus removal operations, as well as foods purchased specifically for the school lunch program. The amount received under the provisions of the National School Lunch Act surplus food commodities for fiscal years 1946-59 were \$77,910,847.92.

Special School Milk Program

Official authorization for this service stems from the Agricultural Act of 1954. The special milk program today operates under the provisions of Public Law 478 as amended in April 1960. Public Law 478 authorizes an annual appropriation of \$85 million for 1959-60 and \$95 million for 1961-62. Schools serving Type A meals under the National School Lunch Program may receive up to four cents reimbursement for each half pint served in excess of first half pint in a Type A lunch. All other schools and child care institutions may receive up to three cents reimbursement for each half pint served.

**ACTS ADMINISTERED UNDER THE CONTROL OF
THE VETERANS ADMINISTRATION FOR THE
EDUCATION OF BENEFICIARIES*****Vocational Rehabilitation***

Public Laws 16 and 894 specifically provide for vocational rehabilitation of disabled veterans. The general purpose of these laws is to restore employability which has been lost by virtue of a handicap due to a service-incurred disability for which wartime rates of compensation are payable. Expenditures figures indicate that subsistence allowances have accounted for 78 percent of the funds required to provide for vocational rehabilitation of disabled veterans under Public Laws 16 and 894.

Education and Training—Public Laws 346 and 550

These laws assisted the veteran in pursuing an educational course in any approved school or job training establishment. Under Public Law 346 payments were made directly to the educational institution for fees, tuition, charges for books and supplies. Only amounts for subsistence and dependents were paid directly to the veterans. Under Public Law 550, payments were made directly to veterans who were free to arrange their training programs just as they might as if they had been granted scholarships.

Educational Assistance for War Orphans—Public Law 634

This act provides educational assistance for training in colleges or vocational programs given by schools below the college level. Beneficiaries must generally be between 18 and 23 years of age and can receive educational services up to 36 months. Direct payments are made to the individual similar to the provisions under Public Law 550.

**ACTS ADMINISTERED UNDER OTHER FEDERAL
OFFICES AND AGENCIES*****Federal Civil Defense Administration***

The Federal Civil Defense Act of 1950 states that the responsibility for civil defense shall be vested primarily in the several states and their political subdivisions. However, the federal government, through the Federal Civil Defense Administration, has the responsibility for preparing national plans or programs, for providing necessary co-ordination and guidance, and for giving necessary assistance to the states in carrying out their civil defense programs. The states may enter in a

contractual arrangement with the Federal Civil Defense Administration for attendance of state representatives at any of the training schools maintained under the F C D A training program.

National Civil Defense Staff College

Contracts executed by the F C D A with the State call for initial presentation of the Civil Defense Administration course by traveling teams of National Civil Defense Staff College instructors. The State agrees under the terms of this contract to present the same type of course at least twice a year for three consecutive years. In addition to providing the traveling team to conduct the initial course, a maximum of \$2,500 is provided to the State to offset state expense of the pilot course and the first state followup course. The additional state conducted followup course stipulated by the contract is eligible for matching funds with up to one-half of the expense of the courses being met by F C D A.

National Science Foundation

The National Science Foundation was established in 1950 to promote the progress of science, advance the national health, prosperity, and welfare, and secure the national defense. Program activities under the National Science Foundation include graduate fellowships in the sciences, institute programs, special projects in science education and training through the research grants program. Graduate fellowship awards are made for a period of an academic or a full year at pre-doctoral level, and for a period from six to twenty-four months at the post-doctoral level. Awards range from \$1,600 per annum for the first year, \$1,800 for intermediate years, and \$2,000 for the terminal year of graduate study. Post-doctoral fellowships range from \$3,800 for the first 12 months and \$4,200 for the next 12.

Institute Programs

Selected high school and college instructors attend and participate in the institute through federal stipends and tuition provided by the National Science Foundation.

Special Projects in Science Education and the Research Grants Program

The program is in effect a kind of laboratory by means of which foundation support may be directed to a variety of activities: (1) student programs, (2) course content improvement programs, and (3) teacher improvement programs. Salaries and subsistence are paid to highly experienced investigators in all fields of the natural sciences and some of the social sciences. A substantial number of research assistants, most of whom are graduate students, are also employed under this program.

Other Federal Offices and Agencies

California received a relatively small amount of money (\$19,000) under these other offices and agencies. Example: small business administration.

Most of the information contained in this report was drawn from the publication *Federal Funds for Education*, published by the U.S. Department of Health, Education, and Welfare. The latest issue of this

publication dates to fiscal year 1957-58 and thus, the figures cited in this report would not necessarily be correct for this last school year

HOUSE RESOLUTION NO. 375

House Resolution No. 375 reads as follows

"Resolved by the Assembly of the State of California. That the Committee on Rules of the Assembly be directed to assign to an appropriate interim committee for study the subject matter of Division 21 of the Education Code, including the preservation of the integrity of scholastic degrees and diplomas; and be it further

Resolved, That the interim committee to which such subject matter is referred shall make a final report of the results of its study with its recommendations to the Legislature on or before the fifth calendar day of the 1961 Regular Session of the Legislature "

It was brought to the attention of this committee that there were certain inadequacies in the legislation passed during the 1959 session of the Legislature relating to the issuance of degrees. Since an intensive investigation on this issue had been conducted in 1958-59 by a subcommittee of the Assembly Education Committee, it was felt unnecessary to hold additional hearings on this subject. *The Progress Report by the Subcommittee on Issuance of Degrees*, dated December, 1957, is replete with ample documentation of the problem which existed then and continues, in many cases, to exist now.

Therefore, this committee requested the State Department of Education, after consultation with the Office of the Attorney General, to prepare proposed legislation which would adequately eliminate the granting of bogus degrees in this State. The material submitted by the Department is reprinted below without comment by the committee.

"REVISIONS AND ADDITIONS TO DIVISION 21, CHAPTER 1, EDUCATION CODE" November 10, 1960

"I. Revisions to Education Code:

"(1) It is proposed that Education Code Section 29007(a) be revised to require a basic standard of educational evaluation for corporations that are not offering quality programs and are presently misleading the general public in the issuance of degrees and diplomas by simply having \$50,000 in assets. This present requirement of possessing \$50,000 in real or personal property is not a sound basis for determining the quality of a school's educational program.

"Corporations that were intended to be controlled are filing under this provision of the Education Code Section, and the Department of Education and the Attorney General have no control or supervision of degrees issued. These schools can advertise that they have complied with the requirements of the Education Code or filed with the Superintendent of Public Instruction, thus implying to the general public a qualitative standard or approval.

"Corporations that have been denied authorization to issue degrees after evaluation by the Superintendent of Public Instruction because of sub-standard programs have then in turn filed under Education Code Section 29007(a) and thus escape any further control in issuing degrees and diplomas.

"The Master Plan for Higher Education emphasizes the areas and quality of degrees to be issued by our tax-supported university and colleges and a similar quality standard should be applied to private degree granting corporations

"A recommended solution to this serious problem is to revise Education Code Section 29007(a) to require that corporations issuing degrees be evaluated and accredited by an accrediting agency recognized by the United States Office of Education.

"(2) It is recommended that Education Code Section 29007(f) be revised to provide that the Superintendent of Public Instruction may rely upon an evaluative determination based on comparison or independent review as to the quality of an educational program offered by a person, firm, association, partnership or corporation. An authorization granted by the Superintendent of Public Instruction should carry prestige and imply that the educational program has quality.

"The Superintendent of Public Instruction should be provided with authority to make a qualitative evaluation of instructional programs for which he is asked to grant recognition.

"II. Add to the Education Code:

"(1) A section to prevent any person, firm, association, partnership or corporation from representing that any person is a holder of an academic degree or diploma, if such diploma or degree is actually not held by that person or if such degree is obtained by sale or barter.

"(2) A section to require that any person representing privately owned out-of-state correspondence schools shall not solicit students or sell any correspondence courses in California for a consideration or remuneration unless he first secures a permit from the Superintendent of Public Instruction.

"Sales representatives tend to misrepresent the quality of training, the need for training, cost of courses, have students sign contracts that result in extreme hardship and financial loss.

"In some instances sales representatives make fraudulent claims without the knowledge of the schools they represent; and some control would do a great deal to protect the public interest and welfare."

HOUSE RESOLUTION NO. 335

House Resolution No. 335 reads as follows:

"Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is directed to assign to the appropriate interim committee for study and report to the Legislature at its 1961 Regular Session the subject of high school and college aviation education programs in the State of California. The committee shall make appropriate recommendations as to the advisability or necessity for legislation in this area, and shall report its findings and recommendations to the Legislature by the seventh calendar day of the 1961 Regular Session."

This committee has not had sufficient time nor funds available to conduct a thorough study of this subject. Besides, the Senate Interim Committee on Aviation conducted an excellent study of this matter

in 1958 and its final report dated 1959 is a very useful and informative document for those interested in pursuing this subject further.

This committee requested the State Department of Education to prepare a report on the current aviation programs in California's high schools and junior colleges. The department was also requested to outline the major problems involved in offering aviation programs in our public schools.

Mr. W. Earl Sams, consultant in secondary education in the State Department of Education, prepared a resume on this subject and it is quoted, in part, below.

"At the close of the last school year, approximately 45 California senior and four-year high schools and 25 of our junior colleges were offering elective aviation courses. Some of these were prevocational or industrial arts in nature, others emphasized the science of aeronautics, and some combined these two features. Approximately one-third of these California schools and colleges were offering flight experience as an integral part of the aviation study and all of these schools consider some kind of actual flight experience to be an essential ingredient of any well-rounded aviation education effort at the high school or junior college level. It is reasonable to estimate that, as of this date, approximately the same number of high schools and junior colleges will be engaging in aviation education activities again during the current school year.

"Each year the number of schools and colleges offering aviation education courses is modified slightly as teachers of aviation subjects take employment in the aviation industry or leave for other reasons. When schools or colleges request advice about the possible development of a new aviation program, our counsel always includes:

"1. The problems of finding and retaining a qualified teacher.

"2. The hazards from possible lawsuits to a district and instructor, and the cost of liability insurance if flight experience is contemplated.

"These are the primary obstacles to the adequate development of an aviation education program in most schools and colleges in California. The retention of qualified teachers would be enhanced if the district and teachers' liability were adequately covered with insurance and some means was provided to insure a given amount of financing for flight experience given each year (many aviation instructors have registered a preference that funds for this type of education should come from an aviation source and not from the General Fund—driver education financing has influenced this opinion). It is the smaller school districts that find the retention of teachers and the provision of adequate liability insurance coverage a particular problem. Three of the Los Angeles City High Schools offer aviation courses that also provide actual flight experience. The liability of all persons concerned is covered by a one-million-dollar policy. Numerous other California high

schools and junior colleges are able to obtain liability insurance protection amounting to only \$100,000 to \$300,000 for an aviation risk. Evidence from the past 12 years' experience with over 125 high school and junior college aviation programs of California engaging in actual flight experience reveals that the district's liability should be covered by at least a half-million-dollar policy. Although *Education Code* Section 8404 states that the California Aeronautics Commission is authorized to provide a basic liability insurance program to insure the adequate supervision and precautionary measures necessary, the commission has not been successful in doing so. School superintendents indicate this is still a most critical problem . . .

"Although only the high schools and colleges of the larger districts have found removal of obstacles a relatively simple task, some of the smaller districts have, with the aid of a well-informed board, provided complete aviation education programs that have gained national recognition. Del Norte County High School in Crescent City is an excellent example of a smaller district that has achieved superb educational results from an educational program that includes actual flight experience . . . Numerous other superintendents of smaller high school districts have registered a desire to offer aviation elective courses in aviation, but found current obstacles insurmountable.

"The postwar aviation education efforts of the State Department of Education were formally introduced in 1945 when the California Wing of the Civil Air Patrol proposed legislation and a supporting budget of \$216,000. Although the financial support from the state was provided for only three years, 125 high schools and colleges offered an integrated program of aviation education including an elective course in the science of aeronautics and culminating in actual flight experience at the local airport. Throughout the State of California, airport and flight school operators registered their eagerness to co-operate with the schools and colleges in the development of an aviation education program providing the academic study in the classroom and utilizing the airport as the laboratory. The cost of the program was very nominal inasmuch as commercial flight schools matched state expenditures on a very generous basis.

"Aid from the aircraft industry is still being provided to implement the nominal aviation education efforts of the State Department of Education . . .

"It is reasonable to estimate that over 12,000 former California high school students of aviation have now graduated from institutions of higher learning and found their way into successful aviation careers.

With over 25 junior colleges of California offering approved federal aviation agency mechanics courses, it is understandable why so many of the aviation technicians at the local airport are graduates of the local junior college.

"In addition to the *Education Code* stipulation that the State Department of Education 'shall aid and assist local school districts

in the development and conduct of a program of aviation education', there are other valid reasons for working with the schools and colleges of California that are desirous of establishing a well-rounded aviation education program. Only a very few high school teachers have learned how to make better use of the interests youth possess in the air and space age to motivate learning in the classroom. School administrators, who are fortunate enough to possess teachers of this type, are loud in their praise of aviation education as a means of motivation. We believe that aviation is an achievement of science and industry that is of such importance it merits consideration in the public schools of California and because many youth will eventually devote a considerable part of their lives to 'command' of a civil or military aircraft.

"Recommendations of recent years to the Legislature which have been made in response to requests by various committees requesting suggestions as to what needs to be done to 'assist or facilitate the aviation education program', have produced the existing Code Sections 8401-8404 (as modified in 1957). The State Department of Education by these provisions is directed to aid and assist local school districts and, therefore, as much time as possible is budgeted by the Department of Education consultant possessing an aviation background. Approximately one-third of his time is devoted to the task. This allows only enough time to permit response to requests for aviation education services, answer correspondence on the subject and prepare occasional bulletins regarding the availability of instructional materials, and speak to groups of teachers or school administrators on problems and potentialities in the field.

"The Department of Education is constantly in touch with the schools and colleges of California from whom recommendations for improvement are received. Many of the school administrators of the 125 high schools and colleges once involved in the complete aviation education offering have stipulated that they have no intention of ever adopting such a program again until a state co-ordinated program of liability insurance and related supervision is implemented.

"The existing aviation education legislation provides ample legal provision for schools and colleges to develop aviation courses. However, the appeal of both administrators and teachers in schools and colleges offering aviation courses suggests that serious obstacles still persist. A summary of the critical needs as reflected by remarks coming from the field includes the following:

"1. 'We still need a state-wide liability insurance program for those schools and colleges that are either not large enough nor surrounded by sufficiently active aviation training activities to provide themselves with adequate insurance coverage.'

"2. 'We need to encourage qualified teachers in the field to integrate aviation study in existing courses and teach elective aviation courses only when the need is sufficient to warrant the expenditure of time and effort (as suggested by the number of students in the

school from families that own and fly aircraft. Most aviation teachers are expected to teach other subjects like mathematics, science, drafting, etc.,—a commendable practice) ’

“8. ‘We would like to urge the Legislative Subcommittees concerned with education and aviation, to visit some of the successful aviation education programs in high schools and colleges of California for purposes of evaluating this modern phase of the curriculum efforts in the schools and colleges ’ ”

o

JOINT INTERIM COMMITTEE REPORTS
1959-1961

Report of the
**JOINT LEGISLATIVE COMMITTEE
FOR THE REVISION OF THE
EDUCATION CODE**

MEMBERS OF COMMITTEE

Assemblymen

SHERIDAN N. HEGLAND
Chairman
WILLIAM S. GRANT
JEROME R. WALDIE

Senators

NELSON S. DILWORTH
Vice Chairman
HUGH P. DONNELLY
DONALD L. GRUNSKY



Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA.

HON. RALPH M. BROWN
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HON. WILLIAM A. MUNNELL
Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore
HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk

March 1960

LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE

March 14, 1960

*To: The President of the Senate
The Speaker of the Assembly
And Other Members of the Senate and Assembly*

Transmitted herewith is a Progress Report of the Joint Legislative Committee for the Revision of the Education Code. This report together with appendices presents a summary of committee work undertaken since July 1, 1959.

As has been previously reported to the Legislature, this committee is undertaking the revision of the Education Code in stages. Stage I was completed in 1959 with the adoption by the Legislature of a re-organized code. Stage II involved the preparation of approximately 250 trailer bills, some of which were adopted during the 1959 General Session and some of which have been carried over for introduction in the 1961 General Session. Stage III which consists of detailed revision of specific divisions of the code is now under way. Some basic recommendations for legislative change are being prepared for the 1961 General Session.

The committee appreciates the continuing support which the Legislature, school officials, and the public have given to this difficult assignment. Judging from the favorable public response to the committee's work, an important service to the people of the State is being undertaken. This committee will continue to keep the Members of the Legislature fully informed about the progress of the committee's work.

Respectfully submitted,

Senate

NELSON S. DILWORTH
Vice Chairman
HUGH P. DONNELLY
DONALD L. GRUNSKY

Assembly

SHERIDAN N. HEGLAND, Chairman
WILLIAM S. GRANT
JEROME R. WALDIE

ACKNOWLEDGMENT

On behalf of the committee I should like to acknowledge the fine co-operation which educational institutions, organizations, and citizens are giving to this committee in the task of Education Code revision. The names of the groups and individuals who are contributing free time and services to the committee are listed in the appendices. The committee work would be much more difficult if it did not have ready access to the State's education and legal experts who have had so much experience with the detailed operations of the Education Code.

I should also like to pay tribute to the University of California, Stanford University and San Jose State College for making staff available to work on the project. Many members of the staff have donated much free consulting time. This committee wishes to express its sincere appreciation for this valuable assistance.

Thanks should also be given to the co-ordinator for the University of California, Dr. Ernest A. Engelbert; and to the team captains Dr. Edgar L. Morphet and Dr. John G. Ross, University of California at Berkeley; Dr. William S. Briscoe and Dr. Erick L. Lindman, University of California at Los Angeles; and Dr. Russell Kent, San Jose State College. The study is being undertaken under the direction of the Bureau of Governmental Research of the University of California under a contractual relationship with the committee.

Sincerely,

SHERIDAN HEGLAND, *Chairman*
Joint Committee on Revision
of Education Code

PROGRESS REPORT OF THE STAFF
TO THE
JOINT LEGISLATIVE COMMITTEE FOR THE
REVISION OF THE EDUCATION CODE

By
ERNEST A. ENGELBERT
and
HAROLD C. FISHMAN

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INTRODUCTION

The purpose of this report is to describe the progress of staff work and research on the revision of the Education Code. This project of the California State Legislature in co-operation with some of the State's leading educational institutions is being undertaken for the purpose of providing the citizens of California with a completely revised and improved Education Code—a code which will be of greater usefulness and value to laymen, school officials, and legal counsel.

The revision of the code, begun in 1957, is being undertaken in stages so that a completed product could be submitted at each stage to the Legislature. The first two stages were completed by the staff in early 1959 and were acted upon by the Legislature in the 1959 Session. A more detailed description of the work that was undertaken in the first two stages is set forth in the *Report of the Joint Legislative Committee for the Revision of the Education Code* published by the Assembly of the State of California in May 1959.

The staff is now engaged, under the Legislative Committee's general direction, in undertaking Stage III, which involves intensive study and extensive rewriting of specific divisions and subject areas of the code. Work began in August 1959, when the Joint Committee met with the Citizens Advisory Committee to explore the areas of the code which should receive priority consideration. After deliberation the group agreed upon the following policies for governing the work in this phase of the project:

- 1 Primary emphasis should be placed upon organizational and procedural matters and clarity of presentation. Major philosophical and ideological matters, e.g., the validity of credentials or the quality of textbooks should not be dealt with at the present time.

- 2 Work should be undertaken in specified divisions or areas rather than upon the whole code at once, so that definite portions of the code will be completed and consistency maintained in subsequent revisions.

- 3 Revision should be undertaken by experts for specific areas in which close collaboration should be maintained between lawyers and educators.

- 4 Co-ordination between experts should be continued as in the first two stages in order to establish overall standards for drafting and presentation and to provide consistency and integration between divisions.

- 5 The Citizens Advisory Committee, acting through subcommittees chosen through expression of the individual member's preference, should directly participate, evaluate, and generally assist the field teams in this phase of the revision. The roster of Citizens Advisory Committee members is given in Appendix B.

After consultation with the staff and the Citizen's Advisory Committee, the Legislative Committee decided upon three discrete areas to be dealt with as priority matters for the initial revisions in Stage III, namely (1) school district organization, reorganization and annexation, (2) school finance and bonding; and (3) powers of governing

boards. Accordingly, three working teams were established under the direction of recognized specialists in each of the areas for the purpose of proceeding with the revision required in this stage of the work.

The staff team dealing with school district organization and reorganization is under the direction of Dr. Edgar Morphet and Dr. John Ross of the University of California, Berkeley. The staff team working on finance and bonding was under the leadership of Dr. William Briscoe of the University of California, Los Angeles, until March 1960, when, because of the pressure of other commitments, his responsibilities were turned over to Dr. Eric Lindman of the same institution. The team on powers of governing boards and elections is under the direction of Dr. Russell Kent of San Jose State College.

In addition to the team personnel, members of the advisory committee have been assigned to subcommittees to work with each team. Also a representative of a county counsel's office or a lawyer actively engaged in Education Code work is associated with each of the staffs. As in the previous stages of the code revision, the Bureau of Governmental Research at the University of California, Los Angeles, has served as the headquarters office and co-ordinating unit for the entire project. A complete list of all personnel associated with each team is to be found in Appendix C.

Each of the teams meet regularly with the citizen subcommittees to explore the issues and set the directions of staff work. The staff prepares working papers which are transmitted to advisory committee members for advice and approval. The work is proceeding harmoniously and on schedule. What follows is a brief description of the work of each team.

THE WORK OF THE TEAMS

School District Organization and Reorganization (Berkeley Team)

The Berkeley Team is endeavoring to make the sections relative to organization and reorganization of school districts more workable—easier for school boards and administrators to use and to understand than is possible at the present time—but not to change the basic policies which have already been established. Inevitably, policy questions have arisen, and will continue to be evident. However, these will merely be identified, and if the Legislative Committee in its good judgment wishes to incorporate these in its recommendations, it will be its prerogative to do so.

The objectives considered by the Berkeley Team for the revision of Division 5 consists of: (1) reduction of the present multiplicity of processes, by eliminating duplications, and by combining "near duplications" and "separate but similar" processes; (2) clear statement of each process in the same format and sequence of steps including the use of identical language where identical procedures are described; and (3) identification of procedures which seem inconsistent with the objectives of the process of which they are a part.

It has also been generally agreed that the staff should attempt to identify and set forth clearly what appeared to be the basic policies established by the Legislature for each phase of the school district organization or reorganization process. In addition to this team procedure, the Berkeley Team has also undertaken to identify subpolicies

relating to each major policy as a requisite for the task of the actual revision of sections. In the course of these activities it became quite clear that conflicts and inconsistencies existed in some of these subpolicies. In connection with the revision, it was deemed necessary to determine (1) which of these subpolicies may be harmonized without important substantive changes involving what seemed to be the basic policy, and (2) which ones cannot be harmonized or resolved without a major change, perhaps because there seem to be different subpolicies for different kinds of districts.

The analysis of the sections contained in Division 5 has been approached in what might be termed a three-dimensional format. The first dimension deals with the types of districts (eighteen in number) for which the code provides ways of organizing, reorganizing and changing boundaries. The second dimension involves the bringing together of information concerning the kinds of change. There are, for example, eight different kinds of change presently provided for in the code which the team has identified. These include—formation of districts from one organized territory, formation from part or parts of existing districts, formation of districts by combining districts, annexation of unorganized territory, annexation of districts, transfer of territory from one district to another; transfer of districts or subdistricts, and dissolution or lapsation of districts. Multiplying 18 types of districts by eight types of change provides some insight into the scope of the problem extant under the present code.

The third dimension involves the procedural steps involved in effecting organization or reorganization of districts. At present, there are many ways of initiating and effecting school district organization, and the team is attempting to reduce this tremendous multiplicity to something that is far more practicable and logical.

In considering the need for more uniformity in the provisions governing responsibility for bonded debt in cases of territory transferred from one district to another, the problem was considered in terms of the extent to which bonded debt liabilities should be considered in a revision of Division 5. It was decided that any change must consider all the provisions for bonded debt and state loans—many of which are very complex, and are found in other divisions of the code. Clearly, this problem required the co-operative effort of two or more of the present code teams, and combined meetings have been held in the San Francisco and Los Angeles areas for this purpose.

A question does arise concerning the issue of basic policies and detailed procedures in the code. It is evident that when merely basic policies are set forth in the law, local school systems have more discretion in planning and operating their programs than when all the procedures to be followed are prescribed in detail. In some cases, particularly those involving elections and financial matters, the detailed procedures may be needed as well as statements of basic policy. In others, detailed procedures may only serve to handicap local school systems. The staff is attempting to differentiate between those cases where basic policies may suffice, and those where detailed procedures are needed, and will present to the committee suggestions for attempting to resolve this phase of the revision problem. The view at this time appears to be that where basic policies would suffice, detailed procedures might be omitted.

The Berkeley Team has recently completed the initial phase of their revision of Division 5, and after meetings with their advisory committee and subcommittees are moving ahead with the project. A four part report by the team was discussed and recommendations of the advisory groups noted as applicable as the work progresses. Part I of this report contains the proposed basis for organization of Division 5 and a tentative designation of chapters. Part II contains an allocation of the present sections among the proposed new chapters. Part III offers the development of the organization and contents of each of the proposed chapters, including articles and matters to be contained in each, and the present provisions to be resolved or incorporated. Part IV is a tentative draft of Chapter 3 of Division 5, concerning annexation of districts, and contains general notes to the tentative draft, special notes, and present and proposed procedures for annexation of districts.

School Finance and Bonding (UCLA Team)

The procedural framework of the team involves three basic elements: (1) study of the provisions concerning school district bonds and bonding. The aim is to bring together and relate in their procedural order all of the provisions relating to the subject; (2) examination of the various state school building bonding laws. The purpose in this instance is to determine if procedures which must be followed by school boards and by various state agencies involved can be made clearer and more logically presentable. No attempt is made to change or modify the existing law; but an attempt is being made to develop substantive suggestions which may guide the legislative committees subsequently formulating new bonding laws. (3) examination of the code sections that set forth the plans and procedures for financing education in California. The intent is not to change the existing plans and philosophy on which California school finances are based, although in this case also, suggestions for substantive changes which may improve the financing of education will be considered, and though they may not be a part of the report of the research committee, they will be offered to the Legislative Committee for consideration.

Thus, this research committee is actually seeking to accomplish a number of things based upon the above procedures. (1) to bring together in co-ordinated order the various sections of the code that belong together. Where sections apply to more than one procedure, the aim will be to make each procedure complete in itself without the necessity of referring to half a dozen other places in the code to fully comprehend the meaning of one section; (2) to simplify the language of the code, and make these provisions more understandable and logically consistent; (3) to prepare those sections of the code dealing with finance, bonds, and bonding, and school property and construction as guides to procedures; (4) to note and suggest to the Legislative Committee questions and other substantive matters which should be considered during any major substantive revision of the Education Code, or other codes relating to education. There is no doubt that any major substantive changes which are to be made in the future in the financing of schools will require a great deal of study and will involve the participation of many people and groups throughout the State similar to

the sort of statewide activity on many levels currently being employed in the present revision.

In viewing the work of the UCLA Team in the area of school district bonded indebtedness, it is interesting to recall the *Report of the Subcommittee on Bonded Indebtedness of School Districts of the Assembly Interim Committee on Education*, presented to the Speaker of the Assembly on June 17, 1959. The report included a review of present laws pertaining to adjustment of liability for school district indebtedness when school district boundaries are changed or the districts are reorganized. The report proposed no solution for present inequities, but it did urge further study of the problem.

"Rather than run the risk of doing only a makeshift job in this area of legislation, the subcommittee is recommending to the Legislature that the entire problem of school district bonded indebtedness be thoroughly investigated with a view toward an ultimate, acceptable, and equitable solution.

Further, this subcommittee is recommending that various interested groups and organizations be encouraged to individually conduct thorough studies of this problem and attempt to reach proposed solutions. A combination of such studies, background materials, and proposed plans from different organizations will more clearly highlight the key areas of disagreement. Through this method a legislative subcommittee can more adequately attempt to solve the problems involved in a thorough, all-encompassing manner."

Although adequate treatment of this problem involves consideration of some substantive questions, the UCLA Team is approaching this issue as one part of its undertaking in the belief that the problem can be separated from highly controversial matters related to the distribution of state school funds. Moreover, there seems to be a growing consensus among school groups concerning the policies which should govern the "retention and assumption" of indebtedness when school district boundaries are altered. These policies have been, and shall continue to be presented by the team to its advisory committee for discussion and recommendations prior to staff proposals.

Powers of Governing Boards, and Elections (San Jose State College Team)

The initial emphasis of this team to date has been upon analysis of the provisions of Division 4 of the Education Code, relating to organization, and powers and duties of local governing boards. The staff has identified over twenty "kinds" of districts differentiated in Division 4 alone, thus illustrating the complexity of the basic problem of simplification. The team has demonstrated quite clearly that existing statutory provisions for local district governing boards represents an accretion of three quarters of a century, during which time there has been a proliferation of kinds of districts each with certain distinguishing characteristics including specifications of powers and duties of respective governing boards. To say that existing provisions are bewilderingly complex is an understatement. It is generally held that present code provisions for local governing boards fail to meet the criteria of clarity and internal consistency which reasonably should be applicable.

A major contention, therefore, of this staff procedure is based upon the premise that since the governing board is basically responsible for the administration and efficiency of school districts, the specifications of duties of boards most certainly should be set down clearly and consistently.

It is well known that inherent conflicts of powers between local boards and other agencies, especially county superintendents, has caused numerous difficulties as well as frequent sources of legislation. In addition, the failure of legislation to stay current in view of developments in size and complexity of school districts has left many "general" provisions applicable only, for practical purposes, to districts no longer of any statistical importance. Professional evolution has in many instances resulted in serious departures of practice from these outmoded legal provisions, and lack of any uniformity of acceptance of these departures by legal counsel has provided even another impetus to detailed and sporadic legislative revision of the most temporary nature. Therefore, it is the effort of this team, within the present pattern of education in California which has evolved over a considerable period of time, to clarify the provisions as they are set forth in the Education Code, and to ensure that these provisions are current and internally consistent as well as presented as simply and clearly as possible.

Concluding Comment

It is important to emphasize that it should not be the role of any code revision body to undertake revision of the basic policy of the State. Consequently, the methodology employed by the teams lies within the existing framework of law for the governing of the schools of California. The objective is to perfect, to clarify, and to simplify existing governmental arrangements, to delete provisions which are no longer operative, and to provide thereby a clear statement of the rules and regulations under which we work and maintain our educational structure.

The staffs are working on a previously agreed upon schedule and the basic work for the aforementioned divisions of the code should be completed by late summer, 1960. The Joint Legislative Committee should have sufficient time during the autumn months of 1960 to hold public hearings and ascertain citizen reaction to the changes which are proposed for legislation. It should be noted here that the staff is continuing to receive the fine co-operation of the Legislative Counsel's Office in various phases of the work.

The funds allocated to the University of California for this stage of Education Code revision will be sufficient to carry the staff on the basis of the present rate of expenditures into the summer months. However, an augmentation will be necessary if the work schedule for 1960 is to be completed. However, we should like to assure the Joint Committee that the studies are being undertaken as economically as possible and that much donated service has been given by many experts to the project.

The staff has had excellent support from the representatives of professional associations. We confidently expect that the legislative proposals which are now being prepared for the 1961 General Session will receive the endorsement of all the participating groups.

APPENDIX A **REPRESENTATIVES AND ORGANIZATIONS OF THE CITIZENS ADVISORY COMMITTEE**

<i>Representatives</i>	<i>Organizations</i>
James H. Angell	County Supervisors Association of California
Richard C. Bartlett	California School Employees Association
(Dale Kern, Alternate)	
Mrs. A. F. Benton	California Federation of Women's Clubs
Dr. E. Maxwell Benton	California Taxpayers' Association
Dr. Theodore L. Byström	California Association of School Administrators
Hal D. Caywood	Association of California County Superintendents of Schools
J. Frank Coakley	California District Attorneys' Association
Dr. Owen J. Cook	California Education Co-ordinating Committee
John Cotton	California Real Estate Association
Louis A. Dean	California Council, American Institute of Architects
Dr. Von T. Ellsworth	California Farm Bureau Federation
Mrs. Patterson Goodrich	American Association of University Women
George Gordon	California School Boards Association
(Dr. Lawrence B. White, Alternate)	
Dr. George E. Hogan	California Department of Education
Vugli G. Howard	Assistant Superintendent of Schools, Stanislaus County
Dr. J. Russell Kent	California Elementary School Administrators Association
Peter Knoles	California Junior College Association
Robert E. McKay	California Teachers Association
Dr. Lloyd Morrisett	University of California
George Murry	League of California Cities
Charles L. Reilly	Christian Science Committee on Publication for Southern (John Martin Hoffman, California and Christian Science Committee on Publi- Alternate) cation for Northern California
Dr. Thomas M. Riley	California Council Continuation Education
Alton E. Scott	California Association of Public School Business Officials
Miss Dorothy Sinclair	California State Library
Thomas A. Small	California Labor Federation AFL-CIO
Byron R. Snow	California Association of Secondary School Administra- tors
Miss Donald Sutchiff	League of Women Voters of California
Dr. James R. Torrey	County Superintendent of Schools, San Mateo
Rus Walton	California Education Study Council
Thomas L. Weems	California Association Adult Education Administrators
Miss W. W. Wood	California Congress of Parents and Teachers, Inc.

APPENDIX B

ROSTER OF PROFESSIONAL STAFF MEMBERS

Ernest A Engelbert, Ph D (Director of Code Revision) Bureau of Governmental Research and University Extension, University of California

Harold C Fishman, M A (Assistant Director of Code Revision) Bureau of Governmental Research and Los Angeles State College

William S Briscoe, Ed D Professor of Education, University of California, Los Angeles

Marvin Ellenberg, Candidate for LL B ----- Candidate for LL B, University of California, Berkeley

Fred J Greenough, M A Assistant Superintendent of Schools, Santa Barbara Co

Kenneth R James ----- Graduate Student, School of Education, Stanford University

J Russell Kent, Ed D Associate Professor of Education, San Jose State College

Erick L Lindman, Ph D Professor of Education, University of California, Los Angeles

Edgar L Morphet, Ph D Professor of Education, University of California, Berkeley

Henry B Niles, LL B Attorney, Anderson, Adams and Bacon, Rosemead, California

John G Ross, Ed D Assistant Professor of Education, University of California, Berkeley

Bryant M Smith, LL B Teaching Fellow, School of Law, Stanford University

Frank A. Yett, Ed D Instructor, Pasadena City School System

APPENDIX C

ROSTER OF STAFF TEAMS AND SUBCOMMITTEES

I. School District Organization and Reorganization

STAFF MEMBERS

Edgar L. Morphet (Co-Director)
John G. Ross (Co-Director)
Marvin Ellenberg

CITIZENS ADVISORY SUBCOMMITTEE

Mrs A. F. Benton	Robert E. McKay	Mrs. Donald Sutcliffe
Hal D. Caywood	George Murry	James R. Torney
Von T. Ellsworth	Byron R. Snow	Thomas L. Weems
Peter Knoles		Mrs. W. W. Wood

PROFESSIONAL ADVISERS

Richard W. Dickenson	County Counsel, San Joaquin County
Robley E. George	Assistant County Counsel, San Joaquin County
Vinyl G. Howard	Assistant Superintendent of Schools, Stanislaus County
Ralph Van Nottwick	Chairman, Alameda County Committee on School District Organization
Drayton Nuttall	Chief, Bureau School District Organization
T. R. Smedburg	County Superintendent of Schools, Sacramento County
Paul Walters	Superintendent, Sequel Union School District

II. School Finance and Bonding

STAFF MEMBERS

William S. Briscoe (Director until
March 1960)
Erick L. Landman (Director since
March 1960)
Henry B. Niles
Frank A. Yett

CITIZENS ADVISORY SUBCOMMITTEE

Maxwell Benton
J. F. Conkley
Owen J. Cook
Louis A. Dean
Alton Scott

PROFESSIONAL ADVISERS

James L. Beebe	Attorney, O'Melveny and Myers, Los Angeles
David L. Bryant	Dean, Long Beach State College
Jack Crowther	Associate Superintendent, Business Services, Los Angeles
Ralph Dailaid	Superintendent, San Diego City Schools
Jerry Halverson	County Counsel's Office, Los Angeles
Clarence Langstaff	Legal Adviser, Los Angeles Schools

III. Powers of Governing Boards and Elections

STAFF MEMBERS

J. Russell Kent (Director)
Fred J. Greenough
Kenneth R. James
Bryant M. Smith

CITIZENS ADVISORY SUBCOMMITTEE

James H. Angell
Richard Bartlett
Theodore L. Bystrom
George Gordon
(Lawrence White, Alternate)
Charles L. Reilly
(John Martin Hoffman, Alternate)
Thomas M. Riley
Rus Walton

PROFESSIONAL ADVISERS

Lyle Edson	District Attorney's Office, San Mateo County
Keith Sorenson	District Attorney, San Mateo County

APPENDIX D

LIST OF COMMITTEE MEETINGS

<i>Date</i>	<i>Meeting</i>	<i>Location</i>
August 13, 1959	Joint Meeting of the Joint Legislative Committee and the Citizens Advisory Committee	Sacramento
October 22, 1959	Organizational Meeting of Staff	Berkeley
December 4, 1959	Meeting of Joint Legislative Committee	San Francisco
December 16, 1959	Meeting of Citizens Advisory Subcommittee with Staff on School Finance and Bonding	Los Angeles
January 7, 1960	Meeting of Citizens Advisory Subcommittee with Staff on School District Organization and Reorganization	Berkeley
January 8, 1960	Meeting of Citizens Advisory Subcommittee with Staff on Powers of Governing Boards	Burlingame
March 3, 1960	Meeting of Citizens Advisory Subcommittee with Staff on School District Organization and Reorganization	Berkeley
March 11, 1960	Meeting of Citizens Advisory Subcommittee with Staff on Powers of Governing Boards	Sacramento

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ASSEMBLY INTERIM COMMITTEE REPORTS
1959-1961

VOLUME 11

NUMBER 2

REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON
LEGISLATIVE REPRESENTATION

TO THE 1961 GENERAL SESSION OF THE
CALIFORNIA LEGISLATURE

House Resolution No. 326, 1959

MEMBERS OF THE COMMITTEE

TOM BANE	WALTER I. DAHL
JACK A. BEAVER	CHARLES E. CHAPEL
CARLOS BEE	CHARLES H. WILSON
MYRON H. FREW, <i>Chairman</i>	

STAFF

FRANCIS R. RUGGIERI, *Committee Consultant*
BETIE M. COFFEY, *Committee Secretary*



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ASSEMBLY
OF THE STATE OF CALIFORNIA

HON. RALPH M. BROWN <i>Speaker</i>	HON. CARLOS BEE <i>Speaker pro Tempore</i>
HON. WILLIAM A. MUNNELL <i>Majority Floor Leader</i>	HON. JOSEPH C. SHELL <i>Minority Floor Leader</i>
ARTHUR A. OHNIMUS <i>Chief Clerk</i>	

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LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
SACRAMENTO, CALIFORNIA, January 2, 1961

HON RALPH M. BROWN

Speaker of the Assembly

MEMBERS OF THE ASSEMBLY

Assembly Chamber, Sacramento, California

GENTLEMEN: Pursuant to House Resolution No 326, 1959 Session of the California Legislature, your Assembly Interim Committee on Legislative Representation hereby submits its report covering its functions and activities during the 1959-1961 interim.

During such interim period extensive research and analysis of Government Code Sections 9900 through 9911 was undertaken. Upon completion of such research, and following an orientation conference of the committee members, a public hearing was held in Monterey on November 22, 1960.

The committee wishes to acknowledge the valuable contributions made by James J. Heaphey, Intern under the California Internship Program, in developing this report.

The attached report contains the findings, conclusions and recommendations of your committee.

Respectfully submitted,

MYRON H. FREW, Chairman
CHARLES H. WILSON, Vice Chairman
TOM BANE
JACK A. BEAVER
CARLOS BEE
CHARLES E. CHAPEL
WALTER I. DAHL

REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON LEGISLATIVE REPRESENTATION

INTRODUCTION

The Assembly Interim Committee on Legislative Representation held a public hearing on November 22, 1960 to consider proposals for improvement of the California lobby law (Government Code, Sections 9900-9911). This hearing was the result of a broad research project undertaken by the committee which revealed constitutional and administrative problems regarding the lobby law. The committee is recommending amendments to the lobby law and plans administrative changes.

SCOPE

THE FUNCTIONS AND PROBLEMS OF LOBBYING

"It is part of the genius of the American people," a student of government has noted, "that they are able to work their political and governmental institutions long after the conditions which prompted them have ceased to exist. Except for the increase in size, the form of American government is not very different today from that of Washington's first administration. The difference, and it is vast, arises less from changes in form than from changes in the social milieu in which our federal republic operates."*

State government in the United States has also adapted, without drastically changing its institutions, to changing social conditions. Only in Nebraska—where in 1937 a unicameral legislature was adopted—has a major change in institutions taken place.

When one searches for the adaptations that have taken place in the twentieth century in federal and state government he finds that the major one has been the assimilation of "interest groups" in the policy-making process. As has so often been noted, group representation through lobbying has become as much a part of the democratic process as the political party. In general, most students of government consider this to be a healthy and necessary assimilation for three reasons.

First, prior to the twentieth century the geographical distribution of citizens coincided far more closely with their needs and desires than it does in this century. As the complexities and interdependencies of modern technological democracy have grown, so has the need of the people to express their interest as functional groups. Representation of these interests in the legislative process provides a means for the expression of these functional interests in state and national laws.

Second, legislation has become increasingly technical and far-reaching in its effects. Advocates of specialized functional groups are able to contribute to the legislative process expert technical knowledge and information on the effects of a proposed policy not evident to the non-expert.

* Donald C. Blaisdell, "Unofficial Government: Pressure Groups and Lobbies" *The Annals*, Vol. 219, Sept. 1959, p. ix.

Third, groups represented by lobbyists have different interests; it benefits a legislator to listen to various approaches to legislative problems. Lobbyists do not necessarily attempt to secure unfair advantages for the groups they represent but more likely are engaged in activity intended to protect the interest they serve against legislation that might be harmful to those interests. Most instances of lobbying are negative rather than positive in approach.

Therefore, the general conclusion is that it would be impractical and unwarranted to prohibit lobbying. Yet some control of lobbying is considered necessary for the following reasons:

(1) As Chief Justice Warren has said:

"Present day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad of pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal."*

(2) There should be some attempt made to check corrupt lobbying. A famous example of such was the activity of Samuel Colt in 1854 in regard to the extension of valuable patent rights. Colt retained a member of Congress on a \$10,000 contingent fee, sent numerous gifts of handsomely decorated small arms to other Congressmen, and provided lavish entertainment at parties.

(3) There should be some protection of employers and groups represented by lobbyists. The possibility of a lobbyist representing two or more employers or groups whose interests may come into conflict should be checked.

THE GOAL OF EXISTING REGULATION

Most of the state legislatures and the United States Congress have adopted legislation intended mainly to provide public disclosure of lobbying activities. The existing legislation appears to follow the theory set down by the House Select Committee on Lobbying Activities in 1951: "The rejection of any attempt at classification of lobbying as 'good' or 'bad' simplifies rather than complicates the problem of legislating on the subject. Laws in this field should aim at the reporting of significant data by pressure groups, and not at their regulation. No attempt should be made to prohibit pressure group activities. Congress and the people can evaluate group pressures properly, provided they know the identity and financial participation of those who support such operations."†

LAWS IN OTHER STATES

Long before the federal government legislated on lobbying the individual states imposed some regulation upon the activity. In 1877, Georgia, by constitutional provision, declared lobbying to be a criminal offense. The first law requiring lobbyists to register and file expense

* In *U.S. vs. Harris*, 347 U.S. 612, 98 L. Ed. 959, 74 S. Ct. 808 (1954).

† As quoted in Frank C. Newman and Stanley S. Surrey, *Legislation* (New Jersey: Prentice-Hall, 1955), p. 19.

accounts was passed by Massachusetts in 1890. The third leader in the field was Wisconsin, and these three states served as models for later action by the other states.

The history of regulatory legislation in America is very much a story of reaction following indignation over scandal. Democracies are, properly, slow in using the machinery of government to remedy problems, and the machinery is usually set into motion by a glaring spark. In the case of California, for example, the immediate cause of the legislation in 1949 was the infamous exposé made by Arthur Samish concerning his lobbying.

Within the past few years considerable attention has been given to regulation of lobbying in the states. A number of bills have been introduced and in Wisconsin (1957), Texas (1959), Illinois (1959), and Minnesota (1960), statutes have either been substantially revised or new statutes passed.

Ten states limit their laws to improper lobbying and have no provisions for registration and reporting. However, it should be noted that some of these states indicated in their replies to the requests for information that they were investigating possibilities of registration and reporting provisions and might soon have legislation on the matter.

Nine states have no regulation whatsoever, but, again, some of these states indicated that the possibility of legislation was being seriously considered. One of them, Minnesota, has, since their reply, passed legislation that requires registration and disclosure of certain facts before committees at which an advocate is appearing in a "professional or representative capacity."

Thirty-one states require registration of lobbyists and 10 of these states charge a fee for registration, ranging from one dollar (\$1) to twenty dollars (\$20). In 12 states a registration is valid until termination of the activity for which registered, in 14 states, until the beginning of the next session, and in five states, other standards prevail. In 15 states registration must take place when or before activity begins, in 13 states, within a week after the session begins or within a week after employment begins, and in three states other standards prevail.

Twenty-one states require a financial report. In eight states both employer and lobbyist must file such reports, in seven states only the employer files, in five states only the lobbyist files. In Michigan, expense statements must be kept in the custody of the lobbyist or his employer for a period of six years and must be produced on court order. In 14 states the reports must be filed within 30 days after adjournment of the session; in three states, within two months after adjournment; in three states, monthly during the session; and in one state, quarterly.

Twenty-six states prohibit arrangements between employer and lobbyist which involve compensation contingent upon the passage or defeat of any legislative measure.

Sanctions are usually limited to criminal penalties, nine states have a three-year disbarment provision from engaging in lobbying after conviction.

LEGAL ASPECTS OF LOBBYING LAWS**Federal Court Decisions****(1) *National Association of Manufacturers vs. Clark*
344 U.S. 804, 97 L. Ed. 627, 1952**

A three-judge court in the District of Columbia declared the Federal Regulation of Lobbying Act unconstitutional as contravening the due process clause of the fifth amendment in failing to define the offense with sufficient precision and to set forth an ascertainable standard of guilt. On appeal, the Supreme Court of the United States vacated the judgment and directed the district court "to dismiss the complaint upon the ground that the case is moot."

**(2) *United States vs. United States Savings and Loan League*
9 F.R.D. 450 (D.C.D.C. 1949)**

A three-count indictment was dismissed on motion of the defendant as a defective pleading. An information was substituted thereafter and it too was later dismissed, this time at the request of the government as defendant had, since the date of the indictment, initiated compliance with the lobbying act.

**(3) *United States vs. Harris*
347 U.S. 612, 98 L. Ed. 989, 74 S. Ct. 808 (1954)**

Five members of the Supreme Court construed the provisions of the lobbying act as applicable only to persons who solicited, collected or received contributions where one of the main purposes is to influence the passage or defeat of congressional legislation and the intended method of accomplishing this purpose is through direct communication with members of Congress. So construed, the disclosure provisions which were at issue here were held not to be unconstitutionally vague nor to violate the freedom of speech and press or the freedom to petition the government. In their dissenting opinion Justices Douglas and Black said:

"We deal here with the validity of a criminal statute. . . . We start with an all inclusive definition of legislation. . . (it) includes 'any other matter which may be the subject of action by either House.' What is the scope of 'any other matter which may be the subject of action' by Congress? It would seem to include not only pending or proposed legislation but any matter within the legitimate domain of Congress. . . the importance of the problem is emphasized by reason of the fact that this legislation is in the domain of the first amendment. . . can Congress require one to register before he writes an article, makes a speech, files an advertisement, appears on radio or television, or writes a letter seeking to influence existing, pending, or proposed legislation? This would pose a considerable question under the first amendment. . . (Statutes) touching this field should be 'narrowly drawn to prevent the supposed evil' . . . and not be cast in such vague and indefinite terms as to cast a cloud on the exercise of constitutional rights. . . ."

**(4) *United States vs. Slaughter*
89 F. Supp. 205 and 89 F. Supp. 876 (both D.C.D.C. 1950)**

Roger Slaughter was indicted in 1949 for violation of Section 308 of the lobbying act. The defendant moved to dismiss on the grounds

that the indictment did not state an offense against the United States, and further contended that the lobbying act was unconstitutional because it was so vague and uncertain that it failed to meet the due process requirements of the fifth amendment; failed to inform the defendant of the charge against him in violation of the sixth amendment, and violated the first amendment because it deprives persons of civil liberties. The court denied the motion to dismiss, thus providing the first court decision upholding the constitutionality of the Federal Regulation of Lobbying Act.

Slaughter also maintained that his activities were exempted by a provision in the law exempting "any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation." He contended that, despite the fact that he had not been a witness himself, some of the activities alleged in a bill of particulars under the indictment related to his arranging for his client to appear as a witness, and that the exemption extended to him as a lawyer also. The court did not pass on this question as the bill of particulars had specified other activities also. After trial before another judge (the defendant having preferred to waive trial by jury) the court found the defendant not guilty, stating

"The statute is a criminal statute. It must be construed most favorably to the defendant in case of any doubt or ambiguity. To interpret the exemption as being limited solely to the person who physically appears before the committee would frequently render negatory and defeat the apparent intent of the Congress. The obvious intent is not to interfere with or hamper the giving of testimony before congressional committees and in order to achieve this purpose it is necessary to permit witnesses to receive advice and assistance in preparing the statements which they propose to make. The testimony in this case shows that the activities of the defendant consisted largely of preparing statements for witnesses to be given by them before congressional committees. These activities are clearly within the exception. True, the bill of particulars alleges other activities, which, if proven, would be within the purview of the act, namely, contacting members of Congress in connection with legislation. No evidence, however, has been introduced by the government to support these items of the bill of particulars."

(5) *United States vs. Neff, et al.*

**U.S. District Ct. for District of Columbia, Criminal No. 768-56, 1956
(unreported)**

The lobbying charge was related to a campaign contribution. The defendants pleaded guilty and were fined. There was no written court opinion interpreting the lobbying act. The factual background of the case was the subject of investigation by another congressional committee which reported its findings to the Senate. (See hearings before the Select Committee for Contribution Investigation, U.S. Senate, 84th Congress, also Senate Report No. 1724, 84th Congress.)

**(6) *United States vs. Rumely*
97 L. Ed. 770 (1952)**

This was not specifically a decision on the Lobby Law. But it is relevant to the Lobby Law.

The issue was that the secretary of an organization engaged in the sale of books of a particular political persuasion refused to disclose to a committee of the House of Representatives operating under the jurisdiction of the lobbying statute, the names of those who made bulk purchases of these books for further distribution. He was convicted for contempt of the committee. The court of appeals reversed with instructions to dismiss the indictment. The judgment of the court of appeals was unanimously affirmed by the Supreme Court, two members not participating.

Five members of the court, in an opinion by Frankfurter, rested their decision on the ground that the investigation was limited by the terms of the resolution to activities constituting direct contact with Congress and it did not extend to other lobbying activities, such as attempts to influence the thinking of the community. Hence, the committee was held to have no authority to compel the production of the information sought from the witness. The constitutional question, whether Congress had power to direct an investigation of the broader scope, was left open. Douglas and Black said that the committee had authority under the terms of the resolution to compel the witness to answer the question propounded, but the House had no constitutional power to confer such authority upon the committee.

State Court Decisions

**(1) *State vs. Crites (Missouri)*
209 S. W. 863 (1919)**

The Supreme Court of Missouri affirmed a lower court decision quashing an indictment which charged the defendant with violation of a State law prohibiting fee contracts contingent on the passage or defeat of legislation. The decision was based on the fact that the title of the then 12-year-old legislative activity disclosure statute was defective in that it contained no reference to contingent fee arrangements, contrary to the provisions of Section 28, Article IV, Missouri Constitution, which provided, "No bill shall contain more than one subject which shall be clearly expressed in its title."

**(2) *Campbell vs. Commonwealth (Kentucky)*
17 S. W. 2d 227 (1929)**

A lobbyist appealed from a judgment fining him \$750 for violation of the section of the registration act which made it unlawful for a legislative counsel or agent employed for pecuniary consideration to go upon the floor of either house of the Legislature except on the invitation of such house. Constitutionality of the act was attacked on three grounds, including the contention that it violated the right of petition. The court said:

"The Bill of Rights declares it to be an inherent and inalienable right of all men to apply to those invested with the power of government for all proper purposes by petition, address, or remonstrance. There is no attempt in this law to restrict the legitimate exercise of that right. The act plainly specifies those to whom

it applies, who are contradistinguished from those appearing before legislative committees, or legitimately influencing the members in behalf of the public, or in their own behalf, respecting any laudable private enterprise "

However, the conviction was reversed on the ground that it failed to charge that defendant was registered, or came within the class of those required to register, under the act

**(3) *Commonwealth vs. Aetna Life Insurance Company (Kentucky)*
263 Ky. 803, 93 S. W. 2d 840 (1936)**

The company was indicted on the charge of violating the registration act by failing to file a required expense report for a lobbyist who had registered as its legislative agent. The trial court found for the company, and the State appealed. The company contended that the lobbyist was employed only as a general agent and that he had registered as a lobbyist of his own accord, without the knowledge or consent of his employer. The evidence showed that he had no instructions from his company to register or act as a lobbyist, and the judgment of the trial court was affirmed.

**(4) *State vs. Hoebel (Wisconsin)*
256 Wis. 549, 41 N. W. 2d 865 (1950)**

The defendant, an employee of the Wisconsin Road Builders Association, was charged with filing a false expense report. The State sought to revoke his license as a lobbyist. He contended that the statute was so vague, uncertain, and indefinite that it constituted a denial of due process of law. The appeals court affirmed the decision of the trial court.

"The acts prohibited and the items of expenditure required to be reported by the statutes here involved can, by their very nature, be defined only in broad terms. Having in mind the purpose of the legislature, what is disapproved and what is required can be determined with reasonable definiteness. The statutes are not unconstitutional."

**(5) *State vs. Decker (Wisconsin)*
258 Wis. 177, 45 N. W. 2d 98 (1950)**

A charge of false expense reports was involved, and the State sought to revoke the lobbyist's license. The defendant, who was legislative agent for the City of Milwaukee, failed to report certain items of expense which were billed directly to and paid by the city. The appeals court held that the words "expenses incurred by him or any agent" included expenses incurred by the lobbyist's principal.

**(6) *State ex rel Arthur vs. Superior Court (Wisconsin)*
257 Wis. 430 (1950)**

This case concerned the technicality of whether a district attorney could prosecute a case involving violation of the lobbyist registration statute when the law provided that "It shall be the duty of the Attorney General upon information to bring prosecutions for the violations of the provisions." The court held that the authority given the Attorney General was not exclusive, and that a district attorney had both the right and the duty to proceed in a case where information of a violation occurring within his county had reached him.

REGULATION IN CALIFORNIA

In California a lobby regulation law was passed in 1949 and amended in 1950. Under this law anyone engaged for pay or compensation to influence legislation must register as a legislative advocate and regularly file certain information, such as his income as an advocate, his principal, the kinds of legislation he is concerned with, and his expenditures as an advocate. In 1960, approximately 600 persons were registered as advocates, representing approximately 500 employers.

As for the employer, under the law solicitation and collection of funds to be used in influencing legislation is to be reported with certain information filed, such as the amounts expended and types of legislation concerned.

LACK OF COMPLIANCE

In a careful review of records in the Legislative Analyst's office the following data were compiled.

In 1959, a total of 526 advocates registered. From January 1959 to June 1960, taking into account the time of registration and known cases of termination of lobbying activities, 8,588 monthly reports should have been filed. Only 2,943 reports were filed, that is, a compliance of 34 percent. In 1960, 16 more registrations were filed. From January to June 1960, 80 reports were required of these advocates. Twenty-eight reports were actually filed, that is, a compliance of 22 percent (See Appendix I).

No reports were on file from employers.

Some interpretation was required in compiling these data because advocates have not been required to file a notice of termination of activities and because the records do not always lend themselves to accurate statistical analysis.

THE PROBLEM OF COMPLIANCE

**Observations and Criticisms of the California Lobby Law
by California Lobbyists**

The following quotations from past hearings of the Committee on Legislative Representation were chosen because they are representative of many observations and criticisms made at these hearings. It should be noted that the persons quoted may no longer be advocates for the organizations indicated.

Hearing on February 23, 1956

Edward D. Londels (Bankers Association of California, Trustees Willow Land Co., Investment Bankers Association of America)

"As the act now reads, any person who appears before the Legislature for compensation in the interests of any legislation must register as a lobbyist, and must file a statement of his expenditures. Now you have a great many men, officers of corporations, officers of trade associations, representatives possibly of labor unions, part of whose duties encompass keeping track of legislation. They are frequently called to the Legislature to express their views or to give information to the members. They are not professional lobbyists, but in a sense they are compensated as part of their duties as officers of a corporation, etc., to go to the Legislature if they have occasion to go . . . I know that

men have hesitated to appear—men who in the public interest should appear before the Legislature have refused to do so because they have been advised by their counsel that if they do, they must register as lobbyists. Now, I think that can very easily be corrected and, at the same time, preserve the chief purpose of this legislation by an appropriately worded amendment to exempt any regularly employed person whose primary duty or a substantial part of his duties is not acting as a legislative advocate, but whose appearance before the Legislature is merely incidental to his other duties, provided that while he is appearing before the Legislature he does not expend an excessive X dollars, other than for his own sustenance and travel.”

Donald Cleary (City and County of San Francisco)

“The law, insofar as I am concerned, is not clear. City officials are exempt, as you know. When the law was first enacted I got an opinion from Mr. Dion Home, City Attorney, who said ‘Frankly, this thing is so vague I don’t know how to advise you.’”

Goscoe O. Farley (State Bar of California)

“We have a committee system. We have five or six or seven committees who work on legislation and many times when a particular bill or ours comes up I have a committee chairman of the committee that’s worked on that bill come up and help me with the presentation. All the chairman gets is his bare traveling expenses. We don’t register him as a representative, as I don’t think we need to . . . We want to be sure we’re doing what is right, and yet we don’t want to clutter up your records with a lot of registrations that really don’t mean anything. If that could be clarified it would ease our mind a little bit . . .”

William Hadeler (California Grocers Association)

“Is the money spent by our organization or our association money that I spend myself? Is the association’s money paying for the rooms at the Senator Hotel an expenditure that I make myself? I don’t know the answer. I don’t live in the Senator Hotel. I live in an apartment, usually across the street at the Francesca. That is paid for by my association. Is that my expenditure, or the expenditure of the corporation who is not classified as a lobbyist?”

Hearing on March 22, 1956

Bert Trask (California Motor Transport Association)

“I think the law is quite confusing as to what we’re exactly supposed to do, and probably the only suggestion I might make is that if you could put out a simple handbook that would tell us exactly what we had to do, it would help a lot.”

Hearing on January 21, 1958

Coleman A. Blease (Acting Deputy Secretary, Friends’ Committee on Legislation)

“As I understand it if a person has as one of its main purposes the influencing of legislation . . . then under 9901 even though only a part of our activities are concerned with lobbying, as I would take 9906 to mean, we still nevertheless must probably file a report covering all of our expenditures even though the bulk of those are, as our committee is currently set up, involved in educational work, speaking engagements, literature, and the direct lobbying activity, that is

the contact with the Legislature is certainly only about a quarter of our work

"Nevertheless, we are, I would take it, required to file concerning those expenditures which are not directly concerned. That is, once you come within 9906 then it's an all or nothing at all proposition. If you don't fall within 9906, that is, if you are an organization which is so large that your direct lobbying activities are only incidental to your major function—it may be a business of some sort—even though you might be spending 50 times as much, for example, as our organization might be, then you are excluded from coverage of the act and are not required to file anything. Now, in the interests of disclosure of those expenditures which bear upon the influencing of legislation, it would seem to me that the committee might want to consider a change of the law so as to require at least disclosure of funds which are involved in influencing legislation directly."

THE PROBLEM OF ENFORCEMENT

Observations Made at Past Hearings Regarding Problems of Constitutionality and Enforceability of the California Lobby Law

Hearing on March 22, 1956

Ralph N. Kleps (Legislative Counsel, California)

"A number of complications in this act were treated in an opinion of the Supreme Court of the United States, written by Chief Justice Earl Warren (The reference is to *US vs Harris*). Our act is a direct copy of the federal act. It is conceivable that this committee might want to consider amendments to the act which would make it reflect the court decision of the United States Supreme Court, because if you don't know about the court decision, and if you confront this act for the first time, and try to comply with it, you will have all the questions in your mind that the court decision has now treated with, and the committee might want to consider simply bringing the act up-to-date in the light of the court decision, so that it accurately expresses what the Supreme Court says the federal act means."

Hearing on January 21, 1958

Dr. Alphonse Fiore (University of San Francisco)

"Enforcement is a problem. But it's not only a problem here it's a problem in the 38 states that have lobby laws, and I would say in my study of the lobby laws throughout the United States that there is more lip service given to these lobby laws than there is any conviction.

"I notice it was said by the chairman (of this committee) . . . that there is failure in the observance of certain provisions of the law, and also it was said . . . by a representative of the Attorney General's office that—when it was asked about prosecutions, etc.—that as far as he knows there have not been any here in the state, and there have been very, very few complaints.

"Your law was drawn up in a great hurry . . . and there were things put in there that were ambiguous, contrary to each other, and loose jointed, and in many cases having cross references which blotted out one as against the other . . . therefore the problem of enforcement then was a part in the lack of enforcement or weakness in enforcement . . .

"Your Attorney General has indicated that he failed to bring prosecutions in several cases, because he said that in the past those particular provisions were not observed by the advocates, and that had been quite general. In other words, they haven't been brought to time, so why was he going to make scapegoats out of these?"

J. F. Conkley (District Attorney, Alameda County)

"I am inclined to agree that there are some uncertainties (in the California lobby law) which would make it difficult for a prosecutor, for a district attorney, to prosecute, or for a judge or a jury to make an adjudication in an alleged violation.

"(The) language in Section 9908 presents difficulty from a prosecution standpoint in the use of the word 'material' . . . now, I think there may be room for a difference of opinion as to what is 'material'—the rule is that in a penal provision, which creates and defines a criminal offense, it should be specific the thing is not certain enough (Thus) it is void, it is unconstitutional because it is too vague.

"Then in subdivision (b) of 9908, the language—in addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years, etc., from attempting to influence. Now, this is a penal provision and that is rather odd language . . . the orthodox way of defining a crime is to say that it is unlawful to do so and so, or any person who does such and such is guilty of a misdemeanor, or a felony as the case may be.

I frankly have serious doubts as to whether or not if a case was presented to a district attorney under this penal provision, and that's the only penal provision in the act under which the district attorney could act, whether you could make it stick all the way up to the Supreme Court."

SUMMARY OF CALIFORNIA LEGISLATIVE COUNSEL'S OPINIONS ON THE CALIFORNIA LOBBY LAW

1. Analysis of the Entire Law:

Analysis of Law Relating to Influencing or Attempting to Influence Legislation (published by the Senate and Assembly Special Committees on Legislative Representation—September, 1956)

2. Question from Assemblyman Harold K. Levering:

Whether Sections 9900-9910 of the Government Code require a person registering as a legislative advocate to answer the question of how much he is paid by the person engaging his services "in all capacities."

Opinion: No. 9095

If the registrant can answer how much compensation he receives for activities subject to Section 9906 of the Government Code, he is not required to answer how much he receives for other services. However, if he receives a lump sum for services, some of which are within and some outside of Section 9906, and he cannot answer how much of that sum he receives for services within Section 9906, he can be required to answer how much he receives in all capacities (*Assembly Journal*, February 26, 1959, p. 926.)

3. Question from Assemblyman Charles Edward Chapel:

A group of people in a specified business or industry raise a fund to procure the defeat of pending legislation by, among other things, employing a legislative advocate to make direct contact with Members of the Legislature to procure the defeat of the bill. Is the group required to register or file reports under Sections 9900-9905 of the Government Code? If so, what are the penalties for failure to do so?

Opinion: No. 16415

If the particular facts of the situation are such that it can be concluded that a "person" (which can be an association) has solicited, collected, or received money for the *principal* purpose of bringing about defeat of legislation by the Legislature, there is a duty to file reports under Sections 9901 to 9905 of the Government Code. Failure to do so would be a misdemeanor, punishable by fine up to \$5,000 or imprisonment up to a year, or both. Also, a person convicted of such offense is prohibited for three years from engaging in activity to influence legislation (*Assembly Journal*, June 4, 1959, p. 4692).

4. Question from Assemblyman Myron H. Frew:

Whether a person who engages himself for pay to influence legislation embodied in a particular bill must register as a legislative advocate if he does nothing more than appear before a committee when the bill is heard.

Opinion: No. 10108

He does not have to register (*Assembly Journal*, March 11, 1959, p. 1247).

5. Question from Assemblyman Myron H. Frew:

Whether the Special Assembly Committee on Legislative Representation is now authorized to impose a fee or charge for the granting of a certificate of registration to legislative advocates under the statute regulating their activities, and, if not, whether the imposition or authorization of such a charge or fee by statute to defray a part of the cost to the State of the issuance of such certificates would be constitutional.

Opinion: No. 4537

The committee at present has no authority to impose a charge or fee as described. We believe a statute imposing such a fee or so authorizing the committee would be valid (August 25, 1960.)

6. Questions from Assemblyman Ralph M. Brown:

Could a civil penalty be imposed for violations of the lobby law? If so, is there a limit on such a penalty?

Would any specific new wording be required in Section 9908 to provide for such a penalty?

What action could the Legislature take in a case where the penalty was not paid?

Opinion: No. 5153

In our opinion it could be provided that a civil penalty shall be recoverable for such violations.

There is no specific dollar limit on the amount of a penalty that could be provided for. The penalty must not be flagrantly oppressive and disproportionate to the offense.

Suggested wording for a civil penalty provision is set forth in the analysis below (See Suggested Changes—Section 9908).

It would be appropriate to provide that the Attorney General (on request of the Legislature or some committee or officer thereof) shall commence and prosecute a civil action to recover the penalty (November 16, 1960).

7 Proposed Amendments.

Assemblyman Myron H. Frew submitted a copy of the proposed amendments (included in this report) to the Legislative Counsel and asked the following questions regarding it:

Referring to Section 9906, if a publisher of textbooks approaches a Member of the Legislature attempting to influence him to use said publisher's books in the California schools, is said publisher excluded from the provisions of the lobbying law?

What is meant by "newspaper or other regularly published periodical" and, particularly, is a trade journal a newspaper or other regularly published periodical?

Opinion: No. 5382

We assume that you refer to a publisher who is "employed or retained" to influence "legislation," i.e., some matter before the Legislature, and who attempts to carry out this purpose by approaching legislators personally, not merely by appearing at committee hearings. In our opinion he is not excluded from the act.

Although the California courts have had occasion to consider the meaning of "newspaper of general circulation," they have not had occasion to consider the definition of "newspaper" alone. In our opinion if a trade journal is in fact published at regular or stated intervals, it is a regularly published periodical.

FINDINGS

The present California Lobbying Law:

- (1) Is not being complied with.
- (2) Is difficult to comply with.
- (3) Is not being enforced.
- (4) Is difficult to enforce.
- (5) Is problematical in language to the point where there are serious constitutional defects.

CONCLUSIONS

(1) The law should be amended to make it more clear to persons affected and to eliminate constitutional defects.

(2) A definite policy on administrative procedures should be developed by the committee in charge. Everyone connected with or affected by the law should have a clear picture of the operation of the law. To this end a manual, outlining the meaning of the law, should be distributed to all concerned.

SUGGESTED AMENDMENT OF THE GOVERNMENT CODE

Section 9900 Definitions. When used in this chapter:

(a) The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution

(b) The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure, *and includes expenditures by any other person to further activities of the person filing a statement and not separately reported by such other persons*

(c) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

~~(d) The term "clerk" means the Chief Clerk of the Assembly of the State of California or such other person as the most recent Rules of the Assembly then designate, and the term "secretary" means the Secretary of the Senate of the State of California or such other person as the most recent Rules of the Senate then designate.~~

~~(e) (d) The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either house of the Legislature, and includes any other matter which may be subject to action by either house~~

~~(f) (e) The term "political committee" includes any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates or presidential and vice presidential electors, or any duly authorized committee or subcommittee of a political party whether national, State, or local~~

~~(f) The term "direct communication" includes all means of direct address to the Legislature~~

~~(g) The term "legislative advocate" means any person who for any consideration is employed or retained to influence legislation in person or through any other person by means of direct communication~~

Reasons for Suggested Changes

In Section 9900, subsection (b) the change closes a loophole now existing in the law. In subsection (d) of the present law, the law will be administered by a Joint Legislative Representation Committee to be discussed in Section 9909. In the new subsection (d) the change brings the bill more into the realm of constitutionality (See the "Douglas-Black" dissent in *U S vs Harriss* in the Report of Court Decisions). The new subsection (f) designates in a constitutional manner what activity is considered as lobbying. The new subsection (g) specifies what is meant by a "legislative advocate."

~~Section 9905. Application of Sections 9901-9903. The provisions of Sections 9901 to 9903, inclusive, shall apply to any person, except a political committee, who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, so-~~

heits, collects, or receives money, or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes-

(a) The passage or defeat of any legislation by the Legislature of the State of California or the approval or veto of any legislation by the Governor of the State of California-

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Legislature of the State of California or the approval or veto of any legislation by the Governor of the State of California-

Section 9905 Application of Reporting and Record-keeping Provisions The reporting and record-keeping provisions of this act shall apply to:

(a) Any person who is required to register

(b) Any person who employs or retains one or more legislative advocates and who makes an expenditure of \$300 or more in any calendar quarter, exclusive of traveling expenses of said advocate, to influence legislation

(c) Any person who receives \$300 or more in a calendar quarter as compensation, reimbursed expenses, exclusive of travel expenses, or both for the purpose of influencing legislation by direct communication. This subdivision shall include any person who receives compensation for any purpose and includes but is not limited to an officer or employee of another person who in the course of his duties devotes any portion of his time to efforts to influence legislation if the amount allocable to legislative activities is \$300 or more, exclusive of traveling expenses. Any such person as to whose activity no fair allocation of legislative and nonlegislative activities is possible shall report his gross receipts and expenditures together with a statement that only a portion thereof is for legislative purposes

(d) Any person who requests or procures any other person to communicate directly with the Legislature to influence legislation by means of a communication which does not show on its face the identity of the person who requested or procured such communication if:

(1) Such request or procurement is in writing and is addressed to or distributed to more than 500 people, or

(2) The expense of the communication requested or procured is paid or agreed to be paid by the person making the request or procurement and more than 25 persons are solicited to make such a communication

(NOTE Sections 9901, 9902 and 9903 are reporting and record-keeping provisions and should be preceded by a section on applicability. Therefore, it is suggested that what is now Section 9905 precede Sections 9901-9903.)

Reasons for Suggested Changes:

The language, as it now stands, is vague and there is a question as to whom it applies. More specific designation of the persons covered will facilitate administration of the law.

Section 9901 Account of Contributions and Expenditures Form of Account. Obtaining Receipted Bills Preservation of Bills and Accounts (a) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated in the previous section as being

covered by this act to keep a detailed and exact account of the following items when they are contributed or expended for activities designated in the previous section:

- (1) All contributions of any amount or of any value whatsoever,
- (2) The name and address of every person making any such contribution of one hundred dollars (\$100) or more and the date thereof,
- (3) All expenditures made by or on behalf of such organization or fund, and
- (4) The name and address of every person to whom any items of expenditure exceeding twenty-five dollars (\$25) is made and the date thereof

(b) It shall be the duty of such person to obtain and keep a receipted bill stating the particulars, for every expenditure of such funds exceeding twenty-five dollars (\$25) in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items

Reason for Suggested Change:

If the section on applicability precedes this section, as suggested in Section 9905, this change in language is necessary

Section 9902 Contributions of \$100 or More Rendition of Detailed Account Every individual who receives a contribution of one hundred dollars (\$100) or more for any of the purposes hereinafter designated of influencing legislation who is designated in the section on applicability shall within five days after receipt thereof render to the person or organization for which such contribution was received a detailed account thereof, including the name and address of the person making such contribution and the date on which received

Reason for Suggested Change:

The purpose of this change is to maintain consistency

Section 9903 Filing Statements of Contributions or Expenditures ~~Form of statement. Statements to be cumulative.~~ (a) Every person ~~receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of Section 9905 of this chapter who shall engage in activity which makes him subject to registering as a legislative advocate shall file with the clerk and secretary Joint Legislative Representation Committee~~ between the first and tenth 15th day of each calendar month ~~succeeding a month during any part of which the Legislature was in session and at other times during the year between the first and tenth day of the month next following the close of each calendar quarter, provided that the statement filed in January shall be cumulative for the next preceding calendar year, a statement containing complete as of the day next preceding the date of filing a statement of contributions and expenditures in such detail as may be called for by the Joint Legislative Representation Committee.~~

(b) All persons other than legislative advocates who shall engage in the activities described in Section 9905 shall file with the Joint Legislative Representation Committee a statement of contributions and expenditures in such detail as may be called for by the joint committee.

The statement shall be filed between the first and 15th days of April, July, October and January.

(1) *The name and address of each person who has made a contribution of one hundred dollars (\$100) or more not mentioned in the preceding report; except that the first report filed pursuant to this chapter shall contain the name and address of each person who has made any contribution of one hundred dollars (\$100) or more to such person since the effective date of this chapter;*

(2) *The total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1);*

(3) *The total sum of all contributions made to or for such person during the calendar year;*

(4) *The name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of twenty-five dollars (\$25) or more has been made by or on behalf of such person; and the amount, date, and purpose of such expenditure;*

(5) *The total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);*

(6) *The total sum of expenditures made by or on behalf of such person during the calendar year.*

(b) *The statements required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.*

Reasons for Suggested Changes:

The language of the section as it now stands is at least extremely confusing, and possibly uncomprehensible. It is hoped that the suggested changes will clarify the question of reporting.

The specifics on reporting have been deleted and a provision that such specifics will be determined by a joint committee has been inserted. It should be noted that the specifics on reporting of the present law are also set down in the record-keeping section. Therefore, the suggested changes do not alter the present statutory requirement that a record be kept on certain specific kinds of contributions and expenditures. The provision that the joint committee will be charged with determining the specifics on reporting increases both the flexibility and the responsibility of the committee in its administration of the law.

Section 9904. A statement required by this chapter to be filed with the clerk and secretary *Joint Legislative Representation Committee*

(a) Shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the *Chief Clerk of the Assembly and Secretary of the Senate, of the State of California, Joint Legislative Representation Committee, State Capitol, Sacramento, California* but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the *clerk committee* of its nonreceipt,

(b) Shall be preserved by the *clerk and secretary Joint Legislative Representation Committee* for a period of two years from the date of

fling, shall constitute part of the public records of ~~his office the committee~~, and shall be open to public inspection

Reasons for Suggested Changes:

The law is now to be administered by the Joint Legislative Representation Committee.

Section 9906 Registration by Lobbyists, Form and Manner of Registration, Report of Receipts and Expenditures, Application of Section, Compilation and Printing of Information (a) Any person who ~~shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Legislature of the State of California or the approval or veto of any legislation by the Governor of the State of California is employed or retained as a legislative advocate shall~~, before doing anything in furtherance of such object, register with the Clerk of the Assembly and the Secretary of the Senate Joint Legislative Representation Committee and shall give to those officers the committee in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. He shall also, at the time of registering, submit to the ~~clerk and the secretary Joint Legislative Representation Committee~~ a written authorization from each person by whom he is employed to act in furtherance of such object. Such person shall again register at each succeeding general session of the Legislature and again submit at that time the information and authorization required by this subdivision (a), unless he at that time is no longer engaged for pay or other consideration for the purposes heretofore specified ~~has filed a notice of termination report as required by subsection (c) of this section~~. A twenty-five-dollar (\$25) fee will be charged for the certificate of registration.

(b) Each such person so registering shall, between the first and fifteenth day of each calendar month, so long as his activity continues, file with the clerk and secretary a detailed report under oath of all money received and each expenditure of twenty five dollars (\$25) or more during the preceding calendar month in carrying on his work, to whom paid, for what purposes, the total of all expenditures during the preceding calendar month, and the names of any papers, periodicals, magazines, or other publications, in which he has caused to be published any articles or editorials, and the proposed legislation he is employed to support or oppose.

(b) The provisions of this section shall not apply to any person who merely appears before a committee of the Legislature of the State of California in support of or opposition to legislation; nor to any elected public official acting in his official capacity, nor in the case of any newspaper or other regularly published periodical, ~~periodical of general circulation, book publisher, radio or television station (including any individual who owns, publishes, or is employed by any such newspaper or periodical, radio or television station) (including an owner, editor or employee thereof)~~ which in the ordinary course of business publishes

news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, *book publisher*, radio or television station or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Legislature of the State of California in support of or in opposition to such legislation, nor to a person when representing a bona fide church or religious society solely for the purpose of protecting the public right to practice the doctrines of such church or religious society.

(c) Every legislative advocate shall file a notice of termination report within 30 days after his activities shall cease on such form as the Joint Legislative Representation Committee shall prescribe.

(c) All information required to be filed under the provisions of this section with the Clerk of the Assembly and the Secretary of the Senate and not previously published shall be compiled by said clerk and secretary, acting jointly, as soon as practicable after the close of the calendar month with respect to which such information is filed and shall be printed in the Journal of the Assembly within the week immediately preceding the constitutional recess, or within the week immediately preceding final adjournment, at each general session, or within the week immediately preceding final adjournment of each budget session, whichever is the earliest date after such filing.

(d) All information required to be listed on the registration form shall be printed in the Journals of the Senate and the Assembly within 30 days of the issuance of a certificate of registration by the Joint Legislative Representation Committee. Such publication shall be the responsibility of the Joint Legislative Representation Committee.

Reasons for Suggested Changes.

The change in statement on who must register is to maintain consistency with the changes in Section 9905.

The change in regard to registration at each general session is intended to strengthen the new provision for filing termination reports.

The fee will be used for administrative overhead.

Exemption of book publishers follows decision of *U.S. v. Rumely*.

The change in the parenthetical remark in subsection (b) is for the purpose of clarity.

The termination report is necessary for good administration.

The change in subsection (d), formerly subsection (c), is intended to reduce costs of publication without reducing effectiveness of the law.

9906 05 Same When registration deemed registration at particular general session as required. Registration within 30 days immediately preceding a general session of the Legislature shall be deemed a registration at that general session as required by Section 9906.

No Changes Suggested

Section 9906 1 If any person registered or required to be registered under Section 9906 hereof employs or requests, recommends, or causes his employer to employ, and such employer does employ, any Member of the Legislature, or any attaché of the Legislature, or any full-time state employee, in any capacity whatsoever, he shall file a statement

under oath with the ~~same officers~~ *Joint Legislative Representation Committee* with whom he registered under Section 9906, setting out the nature of the employment, the name of the person to be paid thereunder, and the amount of pay or consideration to be paid thereunder. If the Legislature is in session at the time of such employment, the statement shall be filed within five days after such employment, and if the Legislature is not in session, it shall be filed within 10 days after the convening of the next session of the Legislature.

Reasons for Suggested Change:

The act will be administered by the Joint Legislative Representation Committee

Section 9906 2. It shall be unlawful for any person to employ for pay or any consideration, or pay or agree to pay any consideration to, a person to engage in activities for the purpose of influencing the passage or defeat of any legislation or the approval or veto of any legislation who is not registered under Section 9906 except upon condition that such person register forthwith

No changes suggested

Section 9906 5 No person shall make any agreement whereby any compensation or thing of value is to be paid to any person contingent upon the passage or defeat of any legislation, or the approval or veto of any legislation by the Governor of California. No person shall agree to undertake to promote, advocate, oppose or influence legislation or to communicate with Members of the Legislature, or to advocate approval or veto by the Governor of California for a consideration to be paid upon the contingency that any legislation is passed or is defeated

No changes suggested

Section 9907 All reports and statements required under this chapter shall be made under oath, before an officer authorized by law to administer oaths

No changes suggested

Section 9908 Violation of Chapter Filing False Documents Punishment ~~Conviction Effect~~ Violation of subsection (b) ~~(a)~~ Any person who violates any of the provisions of the foregoing sections of this chapter, and any person who wilfully files any document provided for in this chapter that contains any materially false statement or material omission, or any person who wilfully omits to comply with any material requirement of the foregoing sections of this chapter, shall be guilty of misdemeanor, and shall be punished by a fine of not more than five thousand dollars (\$5,000) or imprisonment for not more than 12 months, or by both such fine and imprisonment.

(b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Legislature in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine

of not more than ten thousand dollars (\$10,000), or imprisonment for not more than five years, or by both such fine and imprisonment.

Every person who violates any of the provisions of the foregoing sections of this chapter and any person who wilfully files any document provided for in this chapter that contains any materially false statement or material omission is liable to the State for a civil penalty of two hundred dollars (\$200) to one thousand dollars (\$1,000) for each violation. This penalty shall be recovered in a civil action brought at the request of the Legislature, by the Attorney General, in the name of the people of the State, and the sum recovered shall be paid into the General Fund.

Reasons for Suggested Changes

Subsection (a) The present penalty is too severe and inflexible

Subsection (b): Although a number of states have such a provision, it is probably unconstitutional.

Section 9909 Granting certificates of registration; Revocation and suspension Investigation of legislative advocates Powers as to investigations and hearings. Appearance before legislative sessions Recommendation of amendments Report of violations It shall be the duty and responsibility of the respective houses of the Legislature, and they are each vested with the power, through the *Joint Legislative Representation Committee* appropriately established committees thereof as they shall determine.

1. To grant certificates of registration as legislative advocate to all persons registering under, and supplying the information in connection therewith as provided in Section 9906 who, after such investigation and submission of such proof as the committees deem s proper, have been found to be of good moral character particularly as evidenced by never having been guilty of conduct proscribed by Section 9910 and specifically by subparagraphs 2, 3, 4, 6 and 8 of Section 9910 and who have filed the written authorization required

2 To revoke or suspend the certificate of registration of any legislative advocate who has been convicted of violating any of the provisions of this chapter or who, after a hearing, has been found by either house of the Legislature or an authorized committee thereof the *Joint Legislative Representation Committee* to have violated any of the provisions of this chapter or to have wilfully failed to perform the obligations of a legislative advocate as set forth in this chapter

3 On their own motion, on the verified complaint of any Member of the Legislature, or upon the verified complaint of any other person, to investigate or cause to be investigated the activities of any legislative advocate or of any person who they have reason to believe or who it is alleged is or has been acting as a legislative advocate

4. In making any investigation or in holding any hearing, to take and hear evidence, administer oaths, and compel by subpoena the attendance of witnesses and the production of books, papers, and documents

5 To require any person who attends upon any legislative session for any considerable period of time and communicates with Members of the Legislature but who fails to register, or any person, who if reg-

istered, regularly fails to appear at committee meetings at which legislation affecting his employer is considered, to appear before either house of the Legislature or ~~an authorized committee thereof~~ *the Joint Legislative Representation Committee* and explain his purpose in attending upon the legislative session and advise them of the interests for whom he acts and the methods he employs in promoting, advocating, opposing or influencing the passage or defeat of legislation

6 To recommend from time to time such amendments to this chapter, or such other proposals as in their opinion would be conducive to the proper conduct of legislative business without infringing upon the right of all persons to present to the Legislature their views through agents or agencies of their own choosing

7 To report to the appropriate law enforcement officers any violation of this chapter or of Section 35 of Article IV of the California Constitution or of Sections 85 and 86 of the Penal Code or of Sections 9054 or 9056 of this code or of related provisions of law

Reason for Suggested Change:

This would facilitate good administration

Section 9910. A legislative advocate has the following obligation, violation of which constitutes cause for revocation or suspension of a certificate of registration, but shall not unless otherwise provided by law subject a legislative advocate to any other civil or criminal liability.

1 Not to engage in any activity as a legislative advocate unless he be registered as a legislative advocate, and not to accept compensation for acting as a legislative advocate except upon condition that he forthwith register as a legislative advocate

2 To abstain from doing any act with the express purpose and intent of placing any Member of the Legislature under personal obligation to him or to his employer

3. Never to deceive or attempt to deceive any Member of the Legislature of any material fact pertinent to any pending or proposed legislation

4 Never to cause or influence the introduction of any bill or amendment thereto for the purpose of thereafter being employed to secure its passage or defeat.

5 To abstain from soliciting any employment as a legislative advocate except on the basis of his experience, or knowledge of the business or field of activity in which his proposed employer is engaged or is interested.

6 To abstain from any attempt to create a fictitious appearance of public favor or disfavor of any legislative proposal or to cause any communication to be sent to any Member of the Legislature, the Lieutenant Governor, or the Governor, in the name of any fictitious person or in the name of any real person, except with the consent of such real person.

7 Not to encourage the activities of or to have any business dealings relating to legislation or the Legislature with any person whose registration to act as a legislative advocate has been suspended or revoked.

8 Not to represent, either directly or indirectly, through word of mouth or otherwise, that he can control or obtain the vote or action of any member of committee of the Legislature, or the approval or veto of any legislation by the Governor of California

9 Not to represent an interest adverse to his employer nor to represent employers whose interests are known to him to be adverse

10 To retain all books, papers, and documents necessary to substantiate the financial reports required to be made under this chapter for a period of two years

No change suggested

Section 9911. Persons Included in Term "Legislative Advocate"
~~For the purposes of Sections 9909 and 9910, the term "legislative advocate" includes any person registered or required to be registered under Section 9906.~~

Reason for Suggested Change:

This section should be deleted from the law as the term "legislative advocate" is now defined in the section on definitions, namely Section 9900.

RECOMMENDATIONS FOR ADMINISTRATIVE CHANGES

(1) Sound and thorough administration requires a full-time administrator. The salary for this administrator should be covered by the \$25 fee for the certificate of registration

(2) The advocate's card is too large. It should be reduced in size so that the advocate can carry it in his wallet. Also, certain changes in language are necessary to avoid unnecessary repetition and to maintain consistency with other recommended changes

(3) The local telephone number of the advocate should be included in the information provided on the registration form. The number should be included in the list of legislative advocates

(4) A "registration number" should be assigned to each advocate. This will appear on all records kept concerning the advocate, as well as on his registration card. Use of a "registration number" will preclude the necessity of repeating information such as "address" on the reporting forms, the advocate need only state his name and "number". Also, use of these "numbers" will enable committee chairmen to make a quick check on an advocate's degree of conformity with the reporting provisions of the act when an advocate appears before a committee. Lists indicating degree of conformity will be issued monthly by the full-time administrator (see recommendation (1) above).

(5) The form used to maintain a record of monthly reports by advocates should be changed. The present form is inadequate, one cannot use it as a basis for checking conformity with record keeping provisions of the act without undue labor and interpretation

(6) A system of action in cases of nonconformity with the reporting provisions of the law should be established. At a certain date each month lists should be published by the Joint Legislative Representation Committee indicating cases of nonconformity. A letter should be sent to the nonconforming advocate, apprising him of the law and threaten-

ing to revoke his certificate of registration if he does not report within 10 days

(7) An effort should be made to get reports from employers of advocates. At present none of the employers are reporting, although the law requires some of them to file. The first step should be a letter sent out to each of the employers in which the law is explained and filing forms included.

(8) The reporting forms should be changed. The main reason for such change is to maintain consistency with recommendations on changes in the law.

(9) A depository system with the State Treasurer should be set up to manage the \$25 fee for certificate of registration.

NUMBER ADVOCATES MONTHLY REPORTS FILED

Number registered	1959											
	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
1959												
January.....*321	255	246	254	254	240	216	85	85	84	82	84	79
February.....59	6	25	27	28	24	18	5	3	3	2	2	3
March.....62	--	4	33	28	20	19	4	4	3	5	5	6
April.....34	1	1	2	14	13	11	5	4	4	4	4	4
May.....27	--	--	--	2	8	8	2	1	2	--	--	1
June.....15	1	1	1	1	2	5	3	2	2	1	1	1
July.....0	--	--	--	--	--	--	--	--	--	--	--	--
August.....2	--	--	--	--	--	--	--	--	--	1	1	--
September.....1	--	--	--	--	--	--	--	--	--	--	--	--
October.....2	--	--	--	--	--	--	--	--	--	1	2	2
November.....3	--	--	--	--	--	--	--	--	--	--	1	1
December.....0	--	--	--	--	--	--	--	--	--	--	--	--
Total.....526	263	277	317	327	307	277	104	99	97	96	100	96
1960												
January.....5	--	--	--	--	--	--	--	--	--	--	--	--
February.....7	--	--	--	--	--	--	--	--	--	--	--	--
March.....3	--	--	--	--	--	--	--	--	--	--	--	--
April.....1	--	--	--	--	--	--	--	--	--	--	--	--
May.....0	--	--	--	--	--	--	--	--	--	--	--	--
June.....0	--	--	--	--	--	--	--	--	--	--	--	--
Total.....542	263	277	317	327	307	277	104	99	97	96	100	96

LEGISLATIVE REPRESENTATION

NUMBER ADVOCATES MONTHLY REPORTS FILED—Continued

		1960						†Total reports		Percent com- pliance	Terminated advocate reports		
		Jan	Feb	March	April	May	June	Required	Filed		Required	Filed	
1959													
January.....	*321	75	96	112	85	74	48	5,526	2,454	44	98	50	
February.....	59	2	6	6	2	--	--	985	161	16	7	6	
March.....	62	5	6	5	4	3	1	992	154	15	--	--	
April.....	34	4	5	5	5	3	2	465	91	19	16	3	
May.....	27	--	--	1	1	1	1	364	28	3	7	1	
June.....	15	2	1	1	1	--	--	182	26	14	6	2	
July.....	0	--	--	--	--	--	--	--	--	--	--	--	
August.....	2	1	1	--	--	--	--	22	4	17	--	--	
September.....	1	--	--	--	--	--	--	10	0	0	--	--	
October.....	2	2	2	2	2	1	1	18	15	83	--	--	
November.....	3	1	2	2	1	1	1	24	10	42	--	--	
December.....	0	--	--	--	--	--	--	--	--	--	--	--	
Total.....	528	92	119	134	101	83	54	8,588	2,943	34	134	62	
1960													
January.....	5	1	1	2	2	2	2	30	10	30	--	--	
February.....	7	--	2	5	5	2	4	35	18	51	--	--	
March.....	3	--	--	--	--	--	--	12	0	0	--	--	
April.....	1	--	--	--	--	--	--	3	0	0	--	--	
May.....	0	--	--	--	--	--	--	--	--	--	--	--	
June.....	0	--	--	--	--	--	--	--	--	--	--	--	
Total.....	542	93	122	141	108	87	60	8,668	2,971	34	134	62	

* Excludes 3 advocates because sufficient information not available 1 deceased date unknown—no reports 1 deceased date unknown—1 report filed Unable to determine 1 advocate's reports now due because of unclear entry on card

† Excludes Terminated Reports

TABLE I
REGULATION OF LOBBYING IN THE UNITED STATES, DECEMBER 1959

State	Laws limited to improper lobbying	Not regulated	Registration required (fee)	Financial report required	Contingent payments prohibited	PENALTIES (LIMITED TO COUNSELS AND AGENTS)		
						Fines	Imprisonment	3 years disbarment after conviction
Alabama.....	X	--	--	--	--	\$500 and	1 to 2 years	--
Alaska.....	--	--	X	X	X	\$200 to \$1,000 or	Max 1 year	X
Arizona.....	X	--	--	--	--	--	1 to 10 years	--
Arkansas.....	--	X	--	--	--	--	--	--
California.....	--	--	X	X	X	Max \$5,000 and/or	Max 1 year	X
Colorado.....	--	--	X*	--	--	--	--	--
Connecticut.....	--	--	X (\$5)	X	X	Max \$1,000 ^b and/or	Max 1 year	--
Delaware.....	X	--	--	--	--	--	--	--
Florida.....	--	--	X*	--	--	--	Max 20 years	--
Georgia.....	--	--	X	X	X	Max \$1,000 and/or	Max 6 months	--
Hawaii.....	X	--	--	--	--	--	--	--
Idaho.....	--	--	--	--	--	Max \$200 and	Max 6 months	--
Illinois.....	--	--	X (\$5)	--	X	Max \$200	--	--
Indiana.....	--	--	X (\$2)	X	X	\$200 to \$1,000 or	3 months to 1 year	--
Iowa.....	--	--	X*	--	--	--	--	--
Kansas.....	--	--	--	--	X	Max \$5,000 and/or	Max 1 year	X
Kentucky.....	--	--	X	X	X	Max \$5,000 and/or	Max 5 years	--
Louisiana.....	X	--	--	--	--	\$200 to \$2,000 and	6 months to 2 years ^f	--
Maine.....	--	--	X	--	X	\$100 to \$500	--	--
Maryland.....	--	--	X	X	X	\$100 to \$1,000	--	X
Massachusetts.....	--	--	X	X	X	\$100 to \$1,000	--	3 reg sess gen'l court
Michigan.....	--	--	X (\$5)	X ^d	X	\$200 to \$1,000 or	2 months to 1 year	--
Minnesota.....	--	X	--	--	--	--	--	--
Mississippi.....	--	--	X (\$1)	X	X	Max \$1,000 and/or	Max 3 years prison or 6	--
Missouri.....	X	--	--	--	--	(Max \$5,000 corp /assn)	months county jail	--
Montana.....	--	--	X (\$10)	--	X	\$100 to \$500 and	10 days to 1 year	--
Nebraska.....	--	--	--	--	--	Max \$200 and/or	Max 6 months	Until reinstated by Sec State
Nevada.....	X	--	X	X	X	Max \$1,000* and/or	Max 1 year	--
New Hampshire.....	--	--	--	--	--	--	2 to 10 years	--
New Jersey.....	--	X	X (\$10)	X	--	Max \$1,000	--	--
New Mexico.....	--	X	--	--	--	--	--	--
New York.....	--	--	X	X	X	Max \$1,000* and/or	Max 1 year	--
North Carolina.....	--	--	X	X	X	\$50 to \$1,000 and/or	Max 2 years	--
North Dakota.....	--	--	X	--	X	\$100 to \$5,000	Max 1 year	X

TABLE I—Continued

REGULATION OF LOBBYING IN THE UNITED STATES, DECEMBER 1959

State	Laws limited to improper lobbying	Not regulated	Registration required (fee)	Financial report required	Contingent payments prohibited	PENALTIES (LIMITED TO COUNSELS AND AGENTS)		
						Fines	Imprisonment	3 years disbarment after conviction
Ohio.....	--	--	X (\$3)	X	X	\$200 to \$5,000 and/or	1 to 2 years	--
Oklahoma.....	--	--	X	--	--	\$200 to \$1,000 or	10 days to 1 year	--
Oregon.....	X	--	--	--	--	\$50 to \$500 or	3 months to 1 year	--
Pennsylvania.....	--	X	--	--	--	--	--	--
Rhode Island.....	--	--	X	X	X	\$100 to \$1,000*	--	X
South Carolina.....	--	--	X	X	X	\$200 to \$5,000*	Max 30 days	--
South Dakota.....	--	--	X (\$20)	X	X	\$25 to \$100 or	--	X
Tennessee.....	X	--	--	--	--	\$100 to \$1,000*	--	--
Texas.....	--	--	X	X	X	\$200 to \$5,000*	2 to 5 years	--
Utah.....	X	--	--	--	--	Max \$5,000* and/or	Max 2 years*	--
Vermont.....	--	--	X	--	X	\$500 to \$10,000*	Max 5 years	--
Virginia.....	--	--	X	X	X	\$100 to \$500	Max 1 year	--
Washington.....	--	X	--	--	--	\$50 to \$1,000 and/or	--	--
West Virginia.....	X	--	--	--	--	\$50 to \$200 and	10 days to 6 months	--
Wisconsin.....	--	--	X (\$10)	X	X	\$100 to \$1,000	6 months or 1 year*	X
Wyoming.....	--	X	--	--	--	--	--	--
*U S Govt.....	--	--	X	X	--	Max \$5,000 and/or	Max 1 year	X
Totals.....	10	9	31 (10)	21	26			

* Not included in totals

* Required by rules of both houses. Colorado, Iowa, rules of the House

b In addition, any person failing to file the statement of legislative services and expenses within the time required are fined \$5.00 per day for each day after the expiration of the two months within which such statement is required to be filed

c Required by rules of the Florida House, also, any person appearing before a committee may be required by any member of that committee to state under oath if he is appearing in the interests of some person other than himself, to give the name of the other person and to state if any fees or expenses are to be paid by the other person

d Expense statements kept in custody of legislative agent or his employer for a period of six years. Must be produced on court order

* In addition, a corporation or association must file a statement of legislative expenses within the time required or forfeit \$100 for each day thereafter until filed

† Prison term may be added at discretion of court or jury. In Louisiana, for unlawfully going upon floor of Legislature while in session, fine not to exceed \$100 may be imposed

‡ Fine for violation by legislative agent or counsel

§ Fine for violation by person, corporation, or association (other than legislative agent or counsel)

¶ Maximum penalty for failure to register, \$500 and/or 6 months imprisonment, maximum penalty for bribery, \$5,000 and/or 2 years imprisonment

‡ Fine imposed on corporation or association only

* Penalty for failure to file financial report 6 months, penalty for filing false statement 1 year

TABLE II
REGISTRATION OF LOBBYISTS, DECEMBER 1959

State	Length of time registration is valid			Time of registration		
	Until employment ends	Until start next session	Other	When or before activity begins	Within week after session starts or within week after employed	Other
Alaska.....	--	X ¹²	--	X	--	--
California.....	--	X ¹	--	X	--	--
Colorado.....	--	X ¹²	--	X	--	--
Connecticut.....	--	X	X ²	--	--	--
Florida.....	--	X ¹²	--	X	--	--
Georgia.....	--	X ¹²	--	X	--	--
Illinois.....	--	X ¹²	--	--	X	--
Indiana.....	X ³	--	--	--	X	--
Iowa.....	--	X ¹²	--	X	--	--
Kansas.....	--	X ¹²	--	X	--	--
Kentucky.....	X	--	--	--	X	--
Maine.....	X	--	--	--	--	X ¹⁰
Maryland.....	--	X ¹	--	--	X	--
Massachusetts.....	--	X ¹²	--	--	X	--
Michigan.....	--	X ¹²	--	X	--	--
Mississippi.....	X ⁴	--	--	--	X	X ¹¹
Montana.....	--	--	X ⁶	--	--	--
Nebraska.....	--	X ¹²	--	X	--	--
New Hampshire.....	X	--	--	X	--	--
New York.....	--	X ¹²	--	X	--	--
North Carolina.....	X	--	--	--	X	--
North Dakota.....	--	--	--	--	X	--
Ohio.....	X ⁶	--	--	--	X	--
Oklahoma.....	--	--	X ⁷	X	--	--
Rhode Island.....	--	X ¹²	--	--	X	--
South Carolina.....	--	--	--	--	X	--
South Dakota.....	X	--	--	--	X	--
Texas.....	--	--	X ⁶	--	--	X ⁸
Vermont.....	X	--	--	X	--	--
Virginia.....	X	--	--	--	X	--
Wisconsin.....	--	--	X ⁹	X	--	--
U.S. Government.....	--	X ¹²	--	X	--	--
Total ¹⁴	12	14	5	15	13	3

¹ That is, next general session (held in odd-numbered years)

² Until 30 days after the adjournment of the session for which lobbyist is registered

³ But not to exceed three months

⁴ But not to exceed one year

⁵ Until December 31 of the following odd-numbered year

⁶ But not to exceed two years

⁷ Registration is limited to specific piece of legislation

⁸ Registration each and every year within five days of the first undertaking

⁹ Until December 31 of the following even-numbered year

¹⁰ Within two days

¹¹ Within five days

¹² Sessions held annually

¹³ Sessions held on odd-numbered years

¹⁴ U.S. Government not included in totals

TABLE III
SUBMISSION OF FINANCIAL REPORTS, DECEMBER 1959

State	30 days after adjournment	Within 2 months after adjournment	Monthly during session	Quarterly
Alaska.....	C	--	--	--
California.....	--	--	B ¹	--
Connecticut.....	--	A	--	--
Georgia.....	--	A	--	--
Indiana.....	A	--	--	--
Kentucky.....	C	--	--	--
Maryland.....	A	--	--	--
Massachusetts.....	A	--	--	--
Mississippi.....	C	--	--	--
Nebraska.....	--	--	B	--
North Carolina.....	C	--	--	--
New York.....	--	A	--	--
New Hampshire.....	B	--	--	--
Ohio.....	C	--	--	--
Rhode Island.....	B	--	--	--
South Carolina.....	C	--	--	--
South Dakota.....	C	--	--	--
Texas.....	--	--	B	--
Virginia.....	C	--	--	--
Wisconsin.....	A	--	--	--
U S Government.....	--	--	--	B
Total.....	14	3	3	1

A—Filed by employer

B—Filed by lobbyist

C—Both employer and lobbyist must file

1—Expense statements filed monthly during sessions, quarterly at other times

NOTE The wording in some state laws is vague regarding the persons responsible for filing. Therefore, it was necessary for the researcher to interpret, in some instances

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ASSEMBLY INTERIM COMMITTEE REPORTS

1959-1960

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NUMBER 4

COMMITTEE ON MANUFACTURING, OIL,
AND MINING INDUSTRY

FINAL REPORT, 1959-60

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LETTER OF TRANSMITTAL

ASSEMBLY CHAMBERS
CALIFORNIA LEGISLATURE

November 1, 1960

HON RALPH M BROWN
Speaker of the Assembly
California Legislature

MR SPEAKER Transmitted herewith is the final report of the interim activities of your Committee on Manufacturing, Oil, and Mining Industry, established by House Resolution 326 1959 Regular Session

Respectfully submitted,

BRUCE F ALLEN, *Chairman*
JOSEPH M KENNICK, *Vice Chairman*
ROBERT W CROWN
CHARLES B GARRIGUS
WILLIAM S GRANT
JAMES L HOLMLS
LEVERETTE D HOUSL
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EDWIN L Z'BLERG

I. RECOMMENDATIONS

The committee will discuss its findings after the final meeting of the interim. The recommendations will then be included in a supplementary report to be printed in the *Assembly Journal*.

II. ASSEMBLY BILL 2912

Findings

Statements regarding the bill were received from the Los Angeles County Air Pollution Control District, the Bay Area Air Pollution Control District, and the Western Oil and Gas Association.

These organizations were all in major agreement that:

(a) The section dealing with sulphur content of gasoline would reduce by approximately one-half the total quantity of sulphur emitted by automobiles and trucks. It was agreed that the present sulphur emissions are not a significant factor in the production of smog, and that this proposed reduction would, therefore, have no appreciable effect.

(b) The section dealing with acid heat of reaction as tested by the American Society of Testing Materials, Designation D 481-39, refers to a standard which is obsolete, and has been replaced by the Bromine Number determination.

The purpose of this provision is to limit the olefin content of gasoline. The effect of olefin content of gasoline on air pollution is, according to these sources, still subject to controversy among scientists.

In the opinion of the Los Angeles County Air Pollution Control District a significant relationship exists between the olefin content of the motor vehicle exhaust and the olefin content of gasoline.

There is some evidence, according to the Air Pollution Foundation, that the smog-producing olefins are produced by the internal combustion process within the motor vehicle engine, regardless of the olefin content of the motor vehicle fuel.

(c) The section dealing with the restriction of gasoline additives would seem to have little effect upon the production of smog. Evidence received indicates that extremely small quantities of tetraethyl lead are emitted by automobiles using gasoline which includes this additive, and that this quantity is well within the safe limits set by medical authority. It is the opinion of the Western Oil and Gas Association that to produce gasoline of the same octane number without the addition of tetraethyl lead would cost approximately six cents per gallon additional.

The effect of eliminating other possible gasoline additives—such as manganese, molybdenum, tricresylphosphate (TCP) is probably of dubious value in eliminating air pollution. The Los Angeles County Air Pollution Control District is of the opinion that there might be additives which could be harmful to public health or have a significant effect upon smog production, but there is no determination of what these additives might be. At the present time, there does not seem to be any significant amount of pollutants emitted by automobiles as a result of the various gasoline additives.

Recommendations

That continuing study of the relationship between the composition of gasoline, both as regards specific additives and olefin content, be undertaken by the State Department of Public Health, in co-operation with the U S Department of Public Health. The provisions of AB 2912 would appear to have little effect upon the smog problem, while having serious economic consequences for the producers of gasoline.

III MINING RESEARCH

Problems of metallic and other mining industry in the State were the subject of considerable research by the committee staff.

There is little doubt that the metal mining industry in California, especially gold, silver, tungsten, manganese, chrome, and mercury, is in serious economic distress.

The most obvious problem facing the gold mining industry is the low price, as set by the federal government.

According to Kaiser Industries, the iron, limestone, and sand and gravel mining industries seem to be of substantial importance to the economy of the State, and are apparently in relatively healthy condition.

Kaiser Industries has raised the question of tax assessment policies, which under the California Constitution make proven mineral reserves in the ground subject to taxation by the county assessors. Kaiser's position on this matter is that this policy, if implemented fully, could have a very harmful effect upon mining industry.

Commenting upon Kaiser's position, the State Board of Equalization, represented by Chairman John W. Lynch, pointed out that the State Constitution requires that all real property not specifically exempted be assessed at full cash value. The State Board of Equalization, in its recommendations to the county assessors, has urged that the "income" method be used. This method requires that "the appraiser estimate the physical quantity of reserves, the rate of depletion, the annual gross income to be derived from the mining operation, and the cost of extraction. Having arrived at a net income estimate for the probable life of the deposit, the appraiser then capitalizes this net income into a present worth. From this present worth, he deducts the estimated value of property other than the mineral deposit to reach a value of the mineral reserves themselves."

Commenting upon the statement by Kaiser Industries that other western states use a different method, the Board of Equalization has this to say:

"It is true that our neighboring states do not follow this practice (The so-called income approach). There are eight western states in which there are special provisions governing the property taxation of mines. In Arizona, the State Tax Commission assesses mines at their capital value, hence this state does not differ materially from California in its mineral taxation policies. In New Mexico, the State Tax Commission has the option of assessing either the capital value of the mine or its net proceeds. In Wyoming, the State Board of Equalization assesses producing mines on their gross proceeds. In Idaho, Montana, Nevada, and Utah, metalliferous mines are assessed on their net proceeds, by the county assessors in the first of these states and by the state

tax departments in the others. In Colorado, the county assessors assess metalliferous mines on their gross proceeds if such proceeds are not more than four times their net proceeds otherwise on the net proceeds. In all of these states, the taxes to which reference is made are in lieu of property taxes on the mineral deposits, and in some instances they are in lieu of taxes on the surface rights and/or the machinery, equipment, and other improvements. A constitutional amendment would be required in order to adopt any of these methods of property taxation in California."

A further comment of the State Board of Equalization was in regard to oil reserves, pursuant to which the board said, "It is our practice to base property taxes upon annual production as it is impossible to make an accurate guess as to the reserves in the ground and their value."

The major problems of mining seem to be lack of sufficient investment capital, high labor costs, and relatively low price levels for the finished products.

Since all gold mines were shut down by federal order in 1942, the cost of reopening many of these mines has proved to be a major difficulty.

It would seem that any major improvement in the economic condition of the mining industry in California is relatively dependent upon federal government policy as to price, as well as the market conditions for minerals other than gold.

ACTIVITIES OF THE DIVISION OF MINES, AND THE DEPARTMENT OF MINERAL TECHNOLOGY, UNIVERSITY OF CALIFORNIA, BERKELEY

The activities of the Division of Mines and the Department of Mineral Technology, University of California, have considerable import for the metal mining industry of the State. Professor L. E. Shaffer, head of the Department of Mineral Technology, University of California, was asked for his comments about the mining industry situation.

Professor Shaffer feels that the metal mining industry is being reduced to insignificance within California. He feels that this is in large part due to shortsightedness within the industry itself, and listed two causes: (1) A failure on the part of the industry to hire more technically trained persons to run their operations, research, field study, etc., and (2) the inability or unwillingness of the industry to meet rising labor costs with technological development which could help to keep their prices commercially competitive.

Professor Shaffer is of the opinion that the greatest advances in recent years have been made by nonmetal-mining companies, particularly petroleum companies.

He suggested that additional funds for research and for the support of research by graduate students in this field would be of definite value to the industry.

The activities of the Department of Mineral Technology include teaching and mining research, including

1. Model studies of the effects of underground nuclear detonations.
2. Design of equipment for the remote control of drilling and sampling in high temperature, high pressure zones.

3. The application of statistical analysis to the delineation of favorable ore localities.

4. Study of the feasibility of recovering minerals from the sea floor.

5. The applications of nuclear explosions to large scale mining operations.

The department also has research interests in geologic history, age-dating of rocks and ores (in co-operation with the Department of Geology), rock deformation studies, and the electrochemistry of rocks and soils, as well as other technical areas in the field.

The Division of Mines, headed by Professor Ian Campbell, formerly of the California Institute of Technology, has three major offices: San Francisco, Sacramento, and Los Angeles, with a field office in Redding.

The main functions of the department are in the areas of:

1. County Studies

The division publishes as complete a study as possible of each of the counties, enumerating the geological information for the area. While some of this information is obtained from private companies, independent field research is carried on by the division to supplement and update this information.

2. Commodity Investigations

These investigations take a mineral commodity such as limestone, map its occurrences throughout the State, determine the changes that take place in limestone masses with varying geological patterns, provide specific chemical analyses, and thus provide information so that industries in need of limestone reserves can plan detailed programs of study.

3. Geological Mapping

The division is currently involved in making a new geological map of the State, working from U.S. Army base maps, supplemented by information from private sources, the U.S. Geological Survey, mapping done by mining students at the universities, and independent surveys done by the division staff.

Professor Campbell feels that the metal mining industry is in rather poor condition. He feels that this is largely due to high labor costs and the low tariffs on metals from foreign countries.

In the nonmetallic field, however, Campbell feels that producers are economically viable, and are of considerable importance to the economy of the State.

IV. HEARINGS

December 1-2, 1959, Long Beach

The first day of the hearing (December 1) was devoted to a tour of the subsidence area in Long Beach. In the morning the committee members toured the Pier A area and the Naval Shipyard, two of the worst subsidence areas. This gave members a kind of ground level view of the problem. The afternoon was devoted to a boat tour of the harbor facilities. There was a rather high tide on that day, and the members were able to observe first-hand the effect subsidence has had on piers, moorings, and other dock facilities.

The formal public hearing took place on December 2. All of the morning and part of the afternoon was devoted to testimony on the subsidence problem. Evidence was submitted by representatives of the City of Long Beach, the State, and the federal government; the following witnesses testified on the subsidence problem: Raymond C. Kealer, Mayor of Long Beach; Captain Charles J. Palmer, USN, Commander of the Long Beach Naval Shipyard; Jay L. Shavelson, State Attorney General's office; Howard Goldin, State Attorney General's office; Philip J. Brady, Deputy Long Beach City Attorney; Samuel M. Roberts, Subsidence Control Administrator, Long Beach; George E. Woodward, Vice President of DeGolyer and MacNaughton (consultants to Long Beach on subsidence); George C. Hilty, Assistant Chief Petroleum Engineer, Long Beach; W. A. Smith, Assistant Subsidence Control and Repressurization Administrator; Harold A. Lingle, Deputy Long Beach City Attorney; Bob N. Hoffmaster, Chief Harbor Engineer, Long Beach; and Charles L. Vickers, General Manager, Long Beach Harbor Department.

After the subsidence problem had been thoroughly discussed, three other matters were brought before the committee for consideration. Mrs. Bonnie Harter, a representative of the Marina Improvement Association, spoke on the proposed Long Beach marina program. Mr. Theodore Gabrielson, representing the Alamitos Bay City Beach Park Preservation group, and Mr. Jess D. Gikerson, city engineer of Long Beach, presented both sides of the proposed Alamitos Bay seawall project. Hillman A. Hansen presented certain evidence in connection with the question of rights to title in the Wilmington field.

December 10-11, 1959, Santa Barbara

On the morning of December 10 the members were given a guided tour of Richfield's Rincon "island," a large oil-drilling operation off the coast of Ventura County. In the afternoon they were transported by helicopter to the Standard-Humble offshore drilling platform at Summerland, Santa Barbara County. Upon the return to the mainland, the rest of the afternoon was occupied with a flight over the balance of the Santa Barbara County offshore operations, from Point Conception to the southern county line.

At 9 a.m. December 11, the formal hearing started in the supervisor's room of the Santa Barbara County courthouse. The testimony dealt with general problems of the oil industry and the Santa Barbara leases in particular. Some of the subjects covered were: the state of the oil market, both domestic and foreign; the leasing system for offshore exploration presently employed by the State; the productivity of the Santa Barbara leases to date; and the status of the Orange County suit against the State concerning rights to certain tidelands areas.

The witnesses were: Frank J. Hottig, executive director of the State Lands Commission; William R. Wardner, chairman of the Conservation Committee of California Oil Producers; Jack Hassler, State Attorney General's office; Eugene G. Jacobs, State Attorney General's office; John T. Rickard, former mayor of Santa Barbara; and Hillman A. Hansen, Long Beach.

May 31 and June 1, 1960, Los Angeles

This meeting was not actually a public hearing. The committee met jointly with the State Lands Commission as participants in the commission's review of oil and gas leasing policies. The arrangements for witnesses, etc., were made by the staff of the commission while the committee members participated in the formal hearing itself. A majority of the testimony from the oil producers favored having a flat royalty percentage as the biddable factor in future oil and gas leases, rather than the present cash bonus bidding with a sliding scale royalty based on a 16 $\frac{2}{3}$ percent minimum. The witnesses at this hearing were: R. W. Ragland, Richfield Oil Company; Henry W. Wright, Western Oil and Gas Association; W. R. Gardner, Humble Oil & Refining Company; A. B. Henderson, Union Oil Company; L. E. Scott, Standard Oil Company of California; D. E. Clark, Jr., Shell Oil Company; Robert Krueger, Phillips Petroleum Company; E. E. Pyles, Monterey Oil Company; and Edwin H. Pauley of Edwin H. Pauley and Associates.

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1959-1961

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ASSEMBLY INTERIM COMMITTEE ON
FINANCE AND INSURANCE

FINAL REPORT

THOMAS M. REES, *Chairman*
ALAN G. PATTEE, *Vice Chairman*

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ROBERT W. CROWN
BERT DeLOTTO
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December 1960

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OF THE STATE OF CALIFORNIA

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Minority Floor Leader

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Chief Clerk

LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, December 15, 1960

HONORABLE SPEAKER OF THE ASSEMBLY
HONORABLE MEMBERS OF THE ASSEMBLY
*Assembly Chambers, State Capitol
Sacramento, California*

In accordance with the provisions of House Resolution No 3267 of the 1959 Regular Session, your Committee on Finance and Insurance hereby submits its Final Report covering its activities during the 1959-1960 interim

On the basis of House Resolution No 85, Second Extraordinary Session of 1960, three members of this committee, in addition to the chairman, participated in the investigation of secondary financing in real estate conducted by the Subcommittee on Real Estate Contracts and Trust Deeds That report is being filed separately

Moreover, the Honorable Bruce V Reagan functioned as representative of this committee in the deliberations of the Committee on Judiciary—Civil with respect to the Uniform Securities Act

The Finance and Insurance Committee wishes to acknowledge the splendid assistance furnished it during the course of its work by persons and organizations too numerous to cite individually.

Respectfully submitted,

THOMAS M REES, Chairman
ALAN G PATTEE, Vice Chairman

PHILIP BURTON
RONALD BROOKS CAMERON
ROBERT W CROWN
BERT DELOTTO
HAROLD K LEVERING
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ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, December 10, 1960

HONORABLE THOMAS M. REES
*Chairman of Assembly Committee on
Finance and Insurance
State Capitol
Sacramento 14, California*

DEAR MR. CHAIRMAN: Pursuant to your statement about signing the letter of transmittal of the Assembly Committee on Finance and Insurance which I have already signed, I desire to make it clear that in signing this letter of transmittal, I do not agree with all of the findings, conclusions, and recommendations.

When bills are introduced to implement some of the recommendations, I reserve the right to oppose them if they affect the upward revision of taxes or in any manner, shape or form adversely affect the economic climate for business in the State of California.

Cordially yours,

HAROLD K. LEVERING

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REPORT ON AUTOMOBILE FINANCING

INTRODUCTION

During the past 10 months the full committee has conducted an extensive investigation into the practices and activities of automobile dealers relative to the sale of automobiles and the financing of such sales.

This investigation was a natural outgrowth of the efforts by previous Legislatures to regulate the sale of other retail items under installment contracts, and was forecast by the specific exemption of sales of motor vehicles from the provisions of the Unruh Act of 1959.

The sale of automobiles is particularly important because of the very size, for the great majority of families, of the economic decision involved in the purchase of an automobile. Such a purchase is second in importance to a family only to the purchase of a home. The obligation undertaken by a family when it buys an automobile extends, generally, over a 24- to 36-month period into the future, and usually involves monthly outlays of from \$50 to \$150.

A family which finds itself unhappily entwined in a transaction involving an automobile is too often likely to find itself embroiled in other economic and domestic difficulties as well. For example, federal bankruptcy referees in Los Angeles, where in 1960 the number of filings for bankruptcy exceeded that of any previous year, estimate that 88 percent of all bankruptcies are wage earners who have made installment purchases with little or no down payment. It is known, also, that economic difficulties are very often an important cause of subsequent family break-ups.

Two one-day hearings were held on the subject of the sale and financing of automobiles, the first in Los Angeles on May 17, 1960, and the second in San Francisco on August 5, 1960. Present at these hearings were private citizens with complaints alleging fraudulent or illegal activities on the part of automobile dealers, automobile dealers who appeared to deny some of these allegations; representatives of the Better Business Bureau and Legal Aid Society of San Francisco; private attorneys who have been involved in litigation in the area under study on behalf of either dealers or purchasers; representatives of automobile salesmen's unions; and officials of the California Department of Motor Vehicles and of the California Department of Insurance.

In addition to the public hearings, three conferences were held with an automobile industry advisory committee appointed by the chairman and consisting of 12 persons, each of whom is an automobile dealer or a representative of a dealers' association or of a finance company. The advisory committee discussed the many changes in the law relating to the sale and financing of automobiles which had been suggested to the committee at its hearings, at private interviews, and by

private communication. These conferences were of great value in gaining for committee members and staff an understanding of the business methods and the economic problems of the dealers, and in learning of their reaction to the different possible types of remedial legislation.

The committee has received complaints from many purchasers of automobiles in addition to those who testified at the two hearings. Many of these persons were also anxious to testify, but the limitations of available time prevented their doing so. Their complaints, however, were in the main similar to those of the witnesses who did appear, and what differences there were resulted generally from the same methods of doing business as were brought to the attention of the committee at its public hearings.

The major areas of abuse and malpractice, and the major areas of ambiguity and deficiency in existing law with which the committee is particularly concerned are described in the following sections.

SIGNING BLANK CONTRACTS

Some sale contracts are signed by the buyer before they have been completely filled out as is now required by Civil Code Section 2982(a). Some reputable dealerships make a practice of having weekend customers sign blank contracts and then have them typed up by office personnel in the beginning of the following week. The prevalence of such situations, however, leaves the door wide open for the use of a whole gamut of abusive tactics by nefarious dealers.

Basically, the situation created by this failure to conform to the requirements of the Civil Code is this: A buyer, having signed a blank contract on the day he first went to the lot, and having been led to understand that the deal agreed upon orally between the salesman and himself will be incorporated into the contract form, returns to get his copy of the contract (or receives his copy in the mail) and notices that its provisions do not embody the terms agreed upon at the time he signed the contract. The amount of the monthly payments may be higher; the term over which he is to pay may be extended; a sizeable pick-up payment may be included; premiums for unwanted insurance may be included; the agreed-upon value of the trade-in may have been diminished; in fact, any conceivable change may have been made, to his disadvantage. The buyer protests, and is told "You signed the contract, didn't you? This is your signature, isn't it?" The uneducated buyer, the frightened buyer, the buyer unsophisticated in business dealings of this sort, is at a terrible disadvantage. He is bullied by the salesman; he is told that the contract is enforceable and that he will be taken to court if he does not comply with its provisions; he may already have shown off the automobile to his family and all his friends and relatives and be alarmed at the embarrassing prospect of returning home without it.

The very many possible variations upon this theme are obvious, and this basic situation, in one form or another, is present in a great percentage of cases in which the buyer has clearly been taken advantage of by a dealer or his salesman. *It is a situation, specifically not intended by the Legislature to exist, which the dealer has artificially*

created to provide himself with even greater bargaining power than the great amount he normally has vis-a-vis the unsophisticated or unsuspecting customer

Why is it that so many dealers violate, with little or no trepidation, this most basic and important prohibition of the law, and why is it that unscrupulous dealers repeatedly consummate demonstrably illegal transactions by these means? The answer is simply that they know the proscriptions of the law can be ignored with impunity because: (1) The buyer is likely to be deterred from taking any action because of the expense involved and the likelihood that, even should he prevail, he will end up losing money; (2) the dealer knows that, even should he eventually lose in court, it is highly unlikely that he will lose the complete value of his ill-gotten investment in this customer

FAILURE TO DELIVER FULLY EXECUTED COPY OF CONTRACT AT TIME OF SALE

Present law requires that sale contracts be signed by both buyer and seller and "when so executed an exact copy thereof shall be delivered by the seller to the buyer at the time of its execution" [Civil Code Section 2982(a)]. This language is ambiguous. Strictly interpreted, all that is required is that a copy of the contract be delivered to the buyer when the contract is fully executed. The normal procedure of many sellers is to mail the copy to the buyer at the time, often several days subsequent to the buyer's signing, when the deal is accepted, and the contract is signed, by an authorized representative of the seller. So long as delivery is made within a reasonable time thereafter, such procedure does not run afoul of the law.

But it does frustrate the intent of the law. As in the situation where the buyer signs a blank contract, this procedure of delayed delivery affords an unscrupulous dealer a variety of opportunities for unethical practices because the buyer, at the time of sale, does not have in his possession an enforceable contract setting forth in full the terms of the transaction into which he has entered. The only way to ensure that the buyer has an opportunity to know his exact position at the time of agreement and the only way to discourage problems of proof that will arise in later litigation, is to insist upon a definite and well-defined time of closing, with no loose ends left to be tied up later which will provide either party with the opportunity to complain that the deal is no longer exactly the deal originally agreed upon.

The present state of the law gives rise to such circumstances as the following: a salesman has the buyer sign several papers, all of which are supposedly copies of the original shown the buyer, but some of which are only blank forms which are subsequently filled out with different terms by the dealer (or some of which are filled out already, but with different terms), the papers are executed by the dealer, and sent to the buyer, a buyer who does not carefully read the full contract, has no chance to sit down and study his copy while he is on the lot, but must wait until he receives his copy days later at home, no copy is ever delivered—giving rise to serious problems of proof where the dealer maintains that a copy was sent and the buyer maintains the opposite, the copy mailed to the buyer is not signed by the dealer.

(Mr. Vernon Libby, General Manager of the San Francisco Better Business Bureau, testified at the August hearing that a spot-check by the bureau within the past year showed that "something like 60 percent of the contracts * * * examined at that time violated Section 2982. The dealer's signature did not appear on the copies given to the purchasers.")

Some of the many facets of this general problem are illustrated by the case of Mr. and Mrs. Costas Mountanos, who appeared at the August hearing. They testified substantially as follows: While out shopping in their neighborhood for a new automobile, they came across a 1960 Ford that appealed to them, and started to negotiate for its purchase. Before any deal was made, they asked the salesman how much he would allow them on their 1956 Chevrolet as a trade-in. The salesman offered \$1,000, which the Mountanoses refused, as they had already that day been offered \$1,300 for their car by another dealer. He asked them to name a price, they asked for \$1,400, and that figure was accepted by the salesman.

They also agreed to make 24 monthly payments of \$84.28 and a cash down payment of \$300, and the salesman wrote up a contract embodying those terms. The complainants then went home to get the pink slip for their old car and upon their return were told by the salesman that a mistake had been made in the spelling of their name, and he thereupon handwrote another contract which contained the terms previously agreed upon. The contract was then signed. There were no corrections on the contract at that time. Neither Mr. nor Mrs. Mountanos was given a copy of the contract, the explanation being that the bookkeeper had gone home and that there were certain descriptions to be inserted so that a copy would be mailed to them. They never received a copy of the contract.

Two and a half weeks later Mr. Mountanos received a payment book for the car from the bank to which the contract had been sold, and discovered that the \$84.28 payments were to be for 36 months, not 24. His wife and he went to the dealer and were informed by the bookkeeper that they were given credit for only \$900 for their old car. They were shown the dealer's copy of their contract, and were shocked to see that virtually the entire column of figures on the contract had been erased and the figures altered. None of the erasures or alterations had been initialed or had ever been seen by either of them. Upon talking to the sales manager, they were told that they had accepted a \$900 offer for the old car, had been given a copy of the contract, and so far as he was concerned, the deal was closed. The Mountanoses testified that none of this is true, and they have now filed suit against the dealer through their attorney.

MISUSE OF PURCHASE ORDERS

Purchase orders are used by all dealers. They are the main instrument in the first line of negotiation with the prospective buyer, who often does not understand what they are and mistakes them for the sale contract itself. The use made of purchase orders takes this general form: a salesman and customer negotiate a deal that is appealing to the latter, who must then sign the order before the salesman will take

it back to the dealer to be approved. In the case of unethical dealers the order never is accepted, in the usual case, if the order is accepted, the agreement embodied in the order is rewritten on a regular contract form, which is presented to the customer for his signature.

The words "purchase order" are a misnomer, and are misleading when misused by a dealer. There is no real business reason why such an instrument need be used. The salesman negotiating with a customer can as easily have the customer sign a contract whose provisions are to his liking, and the dealer can then accept or reject the deal as he now does with the purchase order.

The purchase order is an integral part of virtually all unethical deals which conclude with the signing of a blank contract or without a fully executed copy of the contract being given the buyer at the time of sale. In the former case, the buyer is told that the contract will be filled in exactly as the order has been, in the latter case, the buyer may be unaware that the copy of the purchase order which he has is not an enforceable contract of sale. In both cases the buyer's reliance on the dealer is predicated not only upon the oral understandings apparently mutually arrived at, but also upon the fact that the customer has *seen* these understandings written out on a purchase order signed by himself and supposedly agreed to by the dealer.

A skilled, high-pressure salesman can induce a buyer to rely on a written purchase order not only to the extent that the buyer will sign a blank contract, he can also get a great many buyers to sign a completed contract whose unread provisions are quite different from those of the purchase order already studied by the buyer. In other words, a purchaser who has signed an order whose provisions he has read and are to his liking, and are in accord with the deal apparently understood and agreed upon in prior conversation with the salesman, will often thereafter sign a sale contract whose provisions are supposedly the same, but are not. Once the deal is reduced to a writing that has been carefully checked by the customer, he can be prevailed upon to acquiesce in any number of other "formalities" without realizing the need for keeping his guard up.

Most customers can thus easily be led to believe that the deal has been consummated by the signing of the order. In the case of an unethical dealer, the buyer is put at the added disadvantage of not being aware that the order has nothing whatsoever to do with the sale and that, for his own protection, it should be ignored as though it did not exist. In all other cases, the buyer who does not know that the order is not a requisite part of the sale is also at a disadvantage in that he is not aware at all times whether or not a deal has been consummated. He does not know, at all stages of the transaction, whether or not he is obligated under an enforceable contract, he does not even know if his offer has been accepted by the dealer in such manner as will bind the dealer legally to the bargain. If, however, the only paper the buyer can sign is a sale contract, he will know there is no agreement until he has signed the contract and has been given a copy of it.

An additional, but related problem caused by the misuse of purchase orders results from the fact that the written order may frequently not contain all the major terms which will later appear in the contract itself. Although the purchase order will often be the only

copy, the only paper, that the customer gets, it often has been used merely to arrive at an agreement on cash price and monthly payments and does not show the time price differential that the customer will be paying. Thus, the buyer will often leave the lot with a car thinking it is going to cost him \$1,500 and not realizing that the interest will cost him another three or four hundred dollars, although those extra few hundred dollars might have been a determining factor in his purchase of the car.

PROBLEMS INVOLVING THE SALE OF INSURANCE

The great majority of new car sales include the sale of insurance of some sort. Most often it is credit life and accident and health, often, it is comprehensive and collision, sometimes, it is bodily injury and property damage (BI and PD). Car dealers and finance companies have a legitimate concern in seeing to it that their security interest in an automobile is protected, but they have a further incentive in selling insurance because they realize their real profits not from the sale itself but from the financing involved and from the sale of extras such as insurance. It is obvious not only that an unscrupulous dealer can mislead a buyer with respect to insurance, but also that an honest dealer, knowledgeable in and concerned primarily with the sale of automobiles, is not likely to be as careful, thorough, or able a salesman of insurance as a broker or agent whose sole professional concern is the selling of insurance.

Some of the problems caused by the wholesale selling of insurance by automobile dealers are these:

(1) *Unnecessary and Overly-expensive Insurance*

Buyers have been sold insurance they did not need, because insurance in force on the car they were trading in, and which still had several months to run, could have been bound over to cover the new car. In many cases examined by the committee, purchasers could have had the same comprehensive and liability insurance at a lesser price had they remained with their original insurance agent or broker. Likewise, Mr. Libby of the San Francisco Better Business Bureau told the committee staff he believed that credit life and accident and health policies were being sold at too high a cost. Instead of these coverages being included as an adjunct of the main policy at a reasonable cost of 25¢ per \$100, they are often sold on a separate policy for one or two dollars per \$100.

(2) *Requiring Purchase of Insurance Through the Dealer*

Although contrary to the anticoercion statute, some dealers tell car buyers that they must purchase insurance through the dealer. In some cases it is less clear that a dealer or salesman has stated specifically that the purchase of insurance at the time of sale was a condition precedent to the sale, but it is clear that they have led buyers to believe that such was the case, and it is clear that they have discouraged buyers from seeking coverage elsewhere by insisting that it be procured immediately and before the automobile could be allowed off the lot.

(3) *Customers Misled as to Type of Coverage*

The most serious problem in the area of insurance sales by dealers is that of the buyer who has been misled into thinking he has purchased liability coverage when in fact he has not bought such coverage. Two witnesses testified before the committee that they had requested, and been assured that they would have "full coverage" under the insurance policy pressed upon them by the dealer, but had later discovered that they did not have BI and PD coverages—although it was these types in which they had been primarily interested. Other complainants told the same story to the committee staff and several more who came to the committee with other complaints discovered for the first time, upon examination of their contracts by the staff, that they did not have the liability and property damage coverage they thought they had.

In some cases this situation results from conscious misleading or untruthful action on the part of salesmen, in others, from a negligent expectation on the part of the customer that the insurance he is getting will cover him completely. But whatever the cause and wherever the blame, it is a situation that arises too frequently and results in too many persons unknowingly driving about without insurance sufficient to satisfy the requirements of the financial responsibility laws.

(4) *Increasing Finance Charge via Sale of Insurance*

The time price differential, or finance charge, of 1 percent per month for each month of the contract's term, is computed on the unpaid balance of the contract—which includes, among other charges, insurance premiums. Whatever kind of insurance is sold, and for whatever term, the customer pays an unjustified amount of finance charge for it.

If the coverage is for one year only, and the term of the contract is two years or three years, the buyer is paying 24 percent or 36 percent, respectively, for one year's use of money. If the coverage is for more than one year, the buyer is again paying 12 percent *every* year for the use of money in any one year to buy that year's coverage. As an example of the latter, included in the unpaid balance of a sale contract running 36 months, is the sum of \$300 of premiums for three years' comprehensive and collision coverage, only \$100 of the \$300 is being used to pay for the coverage in each of the three years, but the buyer is paying a finance charge on \$300 in each of the three years.

(5) *Inept Writing and Service of Policies*

When insurance coverage is not written by a professional insurance man whose interest is in retaining insurance customers, it is not liable to be well-written and well-served. The committee has received a number of letters from insurance agents who have reviewed policies written by automobile salesmen and who have determined, among other things, that buyer was not given the 10 percent reduction for safe driving to which he was entitled, buyer was not given 10 percent credit for compact car, 21-year-old buyer was sold policy in name of step-father co-signer of sale contract which policy excluded all drivers under 25 (step-father never drove car), and wherein the credit life payments would ensue only when the step-father died (although he had no money invested in the car and made none of the payments), buyer was sold

disability insurance by same finance company that made him the automobile loan, and when later disabled by a heart attack the same company, acting as insurance agent, refused his disability claim because of an exclusion in the fine print of the policy it had sold him—and repossessed his car

In addition, such insurance salesmen have no interest in the prompt and efficient service of claims, or in seeing to it that the insured is given sufficient or even any notice of impending need for renewal, especially if the sale contract is nearing completion of its terms and the dealer will no longer have any interest in the automobile as security for payments under the contract

The general facets of the problem involved here are well summarized in a letter to the committee chairman, dated June 27, 1960, from the Superintendent of Insurance of Ohio. In the course of discussing the reasons that led to the prohibition of the sale of insurance by automobile dealers in that state, the superintendent wrote

“Actually, the automobile dealer involved in an insurance transaction is primarily interested in collision and comprehensive coverages which protect his interest or that of the mortgagee, and too frequently no thought is given to the basic liability coverage which I am sure we all feel is of paramount importance as far as the public interest is concerned

“When an automobile dealer gets into the insurance business he does so primarily to serve his interest and not that of the insured. The insurance business today is, as you will recognize, an extremely complex business, and the interests of an insured are best served when he has a competent professional acting as his agent. The question of liability coverage and the adequacy of limits of coverage normally are not within the scope of the training or interest of an automobile dealer or his salesman.”

MISUSE OF PICKUP AND BALLOON PAYMENTS

A pickup payment is a sizeable payment (often in excess of \$100) which a sale contract calls for usually within a week or two subsequent to the date of the contract itself and usually prior to the date on which the first monthly payment is to be made. Correctly used it is a legitimate device to enable a buyer, in effect, to split his down payment obligation into two separate payments, the first to be made at the time of sale and the second a week or so later after he has received another paycheck. In such circumstances, it eases the financial burden on the buyer while still extracting from him a reasonable cash down payment.

A balloon payment is a large payment (often of several hundred dollars) called for by the contract after all monthly payments have been made. There is no legitimate reason for such payments and, so far as the committee is aware, only one large dealer makes a practice of including them in some of its contracts.

Improperly used, any payments, other than the regular monthly installments generally provided for in a contract, can be an additional instrument of abuse by a dealer. Unless fully and carefully explained by the salesman, the existence of these extra payments is generally not known or fully understood by the purchaser, who is aware only that

he has to pay X number of dollars per month on his automobile—because the amount of the regular monthly payments is the basis on which the deal has been negotiated (see discussion, *infra*, under “Side-Note Financing”) The dealer should not be able to let the purchaser think that he is paying X dollars per month and then make up the difference toward what the dealer really wants and expects to make on the deal by tacking on a pickup payment at the beginning or a balloon payment at the end If the dealer will not get the profit he wants by charging X dollars per month, he should insist on larger monthly payments, but not lull the buyer into thinking his total obligation is the X dollars per month figure The committee has seen a number of cases in which the buyer had signed a contract, came to get his car, and was then told (and then realized for the first time that the contract he had signed provided) that he had to put up \$100 cash as a pickup payment before he could drive off in his new car

A second problem respecting pickup payments has been illumined by other cases reviewed by the committee The buyer is told he may make his down payment in two installments, and the second installment is not written into the contract as part of the down payment but as a separate payment in addition to the monthly installments The law-abiding dealer is acting properly because he may not legally state the second payment as part of the down payment since he has not received the money on the date the contract is executed But the unscrupulous dealer figures the time price differential on a sum which includes this pickup payment because the payment is not subtracted from the cash price noted on the contract and is, therefore, included in the unpaid balance upon which the finance charge is computed In such cases the buyer is paying a finance charge on part of his down payment money

PUBLIC MISCONCEPTION OF FUNCTION AND AUTHORITY OF AUTOMOBILE SALESMEN

Automobile salesmen do not serve the same function as do salesmen of retail goods generally They do not actually sell cars They have no authority to close deals They are front men for management, and their function is to negotiate the terms of a deal with a prospective buyer and then to seek ratification by management of the deal they have tentatively worked out with the customer This status of salesmen of not being “authorized representatives” of dealers is confusing to the buying public, and is effectively used by some dealers as another means of misleading their customers

Paul Martin, secretary of the National Automobile Salesmen's Clubs Organization, who testified at the May hearing, commenced his testimony by pointing out that “all of the people who have given testimony here today in regard to the purchase of a car, * * * always spoke in terms of their deal or their understanding with the salesman” The various items required by Civil Code Section 2982 to be included in the sale contract are the only determination of the buyer's rights and interests in the transaction, and are designed to establish them definitely when the buyer signs the contract

"However, because the buyer considers a licensed automobile salesman, as these buyers here today have, to be an authorized representative of the seller, and capable of executing a conditional sale contract, he then considers his figures and guarantees to be final * * * Therefore, in his innocence, and not realizing the true role of the salesman or the sales manager in the business to be conducted the buyer will make written commitments predesigned to condition him for subsequent rewrite manipulations. And I think that the people who testified here today have fallen in line with this type of thing * * * After this rewrite, the buyer still does not have a validly executed conditional sale contract, as defined in Section 2982, insofar as the rewrite has not yet been signed by an authorized representative of the seller.

"This system can continue, and does continue until such time as the seller may elect to accept what he considers to be a satisfactory conditional sale contract, presigned by the buyer, and subsequently filled in by a salesman, sales manager, or the seller himself. Then and only then does the buyer have a legal copy of the contract, as defined in Section 2982, and containing a determination of his interest in the transaction * * * Now, then, to resolve protection of the buyer's interest, and remove the question as to the exact time when the contract has been executed, the statutes must define the seller's authorized representative and identify this person to the buyer to guarantee protection of his interest * * * It would seem to me that in every case there has been here today the salesman and the sales manager were in disagreement as to the conditions of the buyer's interest in the transaction."

Assemblyman Cameron thereupon commented, with respect to the present function of a salesman: "So, in effect, he is acting as an agent, so far as the purchaser is concerned, who assumes he is an agent of the 'house' until the last 30 seconds of their discussion together, so that the purchaser has been brainwashed * * * as to the terms of the deal and thoroughly understands what he has agreed to until the papers leave his hands."

Subsequent testimony from representatives of the California Department of Motor Vehicles substantiated the fact that dealers generally do not give authority to salesmen to close deals and that, until the dealer signs a contract, there is no contract executed by both parties as required by present law. The authority of the salesman becomes, in effect, dependent upon the value of the deal to the seller, and the misrepresentations of salesmen such as were alleged by some of the complaining witnesses before the committee can be passed off by the dealer or sales manager in such manner as was testified to by Mr. Paul Weiner at the August hearing. Upon complaining to the sales manager that the contract he was given was seriously out of line with the understanding he had reached with the salesman, Mr. Weiner was told by the manager "that it made no difference to him what the salesman promised—promises and deals were two different matters. The salesman was strictly on his own, and what he said and what he gave were two different matters, and the only thing the sales manager saw and was interested in was the signed contract."

INSUFFICIENT PROTECTION FOR BUYER IN DEFAULT

(1) *Rebate of Finance Charge*

Although Civil Code Section 2982 requires a rebate of unearned time price differential where a contract is paid off in full prior to maturity, there is no provision for such rebate where the buyer is in default and his obligations under the contract are cancelled by reason of repossession of the automobile and action against him for a deficiency judgment.

Where the buyer does not, for whatever reason, continue to make payments over the full term of the contract, some portion of the time price differential as originally figured is, of course, unearned. There is no more excuse for charging the original full amount of finance charge to the buyer in default than in the case where there is an anticipation of payments by a solvent buyer.

(2) *Notice of Resale*

Present law requires five days' written notice of intent to sell a repossessed motor vehicle. The notice may be given by mail. During the period of five days after such notice is sent, the person or persons liable on the contract may satisfy their indebtedness in full, but are liable for any deficiency after sale only if the required notice has been given.

The requirements regarding sale of a repossessed automobile should be such as to help ensure that the greatest possible amount will be realized on the sale, for both the original purchaser and the holder of the contract are better off the higher the amount that is received at the sale. When, however, the holder can satisfy its full interest in the contract by selling the vehicle at less than the price it could command at an open, public sale, there is no incentive for it to get the highest possible price, and the buyer is hurt to the extent of the difference between the actual market value and the lower price obtained at the sale.

Inclusion in the statutes of provisions similar to those in force in other states which have regulated the sale of motor vehicles and which require 10 days' written notice by personal delivery or registered mail, specifying the time, date and place of a public sale, and publication of the notice in a newspaper of general circulation, would improve the chances of the sale's being made at the true market price.

SIDE-NOTE FINANCING OF DOWN PAYMENTS

A number of large-volume dealers advertise automobiles for sale with no down payment required, on approved credit. There is no doubt that this advertising is misleading. It may be that some automobiles are sold with no down payment, but the committee has yet to hear of such a transaction.

The reason for the advertising, of course, is to lure customers of relatively small economic means to the particular dealer, and if there were nothing more involved, this kind of advertising would not be a too serious matter. It is serious, however, because it is used for purposes other than the mere attracting of would-be buyers. It is used to instill in the customer's mind the idea that he is, in fact, not being asked to

make a down payment, and he is thereby distracted from those particulars of the transaction which make provision for such a payment.

The entire deal is negotiated with no mention of a down payment. Salesman and buyer make offers and counter-offers, until a mutually agreeable price is reached. This price is stated, and has been discussed, only in terms of a monthly payment. The colloquy of negotiation follows this pattern:

"Can you make payments of \$105 a month?"

"No. No, that is too high." The salesman, across a table from the buyer, jots down figures on a piece of paper which the customer cannot read.

"Well, how about \$97.50 a month?"

"Well, I think that would be a little too much, too." The salesman figures again, and shakes his head slowly. "I don't know if I can do any better than that for you. Why don't you give me a figure and I'll see if maybe I can get the sales manager to give you a break, seeing as you've got a clean trade-in and a steady job." The customer is now on the defensive, and feels that the salesman is trying to do him a favor and help him out. He suggests a price about \$20 higher than the one he originally had intended to pay. The advertisement had listed a number of cars for \$59.50 a month and something around that figure was what he had in mind, but apparently it was going to be more expensive than he had thought.

"How would \$50 be. Or maybe a little less." I don't think I can really afford much more than that." The salesman shakes his head again, but says, "I really don't think they'll go for it, but I'll give it a try." The customer is left alone, usually for a substantial length of time, to reflect on how unreasonable he has been to the salesman who is so obviously trying to get him a good deal.

The point of all the above, as anyone connected with the automobile business knows, is to set up the customer psychologically for *any* deal the salesman returns with that will call for monthly payments of only \$80. There has been no talk of a total price, or of an allowance for the trade-in, or of the number of months for which the contract will run, or of the cash down payment that will be required and the furniture that will have to be mortgaged. The customer will be relieved to find out that the sales manager has agreed to the \$80 payments, but it is obvious that the dealership, which was angling originally for a 30-month contract at \$100 a month and was prepared to allow \$1,000 for a trade-in, would be happy to write a 36-month contract at \$80 per month and give only a \$700 allowance once it has determined that the finance company which buys its paper is satisfied with the customer's credit and will buy the 36-month contract.

When the customer has been so conditioned, he is given a contract to sign, and he is then told, for the first time, that he must go over to the X Loan Company to sign additional papers. Some customers will realize at this point that they are being sent out to sign up for a down payment loan, but many do not—for they are not told the nature of this additional transaction and there has been no talk at all throughout the negotiations of a down payment.

If the customer becomes aware of what is going on and protests, he is looked at with amazement by the salesman who points out, quite rightly, that there never was any undersanding that the deal could possibly be accepted without some down payment as a show of good faith, and that the customer has already signed the contract anyway and the agreement is complete and the contract enforceable so far as the dealer is concerned.

A surprising number of buyers do not know they are obligating themselves for a second loan to cover the down payment. Thinking that their total monthly obligation will be the \$80 which was the only figure mentioned during the entire period of negotiation, they discover only upon receipt of a payment book from the X Loan Company a few weeks later that they must make monthly payments of \$20 to that company as well as payments of \$80 to the bank or finance company which bought the basic sale contract from the dealer. Miss Evangeline Yateo, who appeared before the committee at the May hearing and whose contract called for monthly payments of \$72.34 on her car, later found out that she had also to make an additional monthly payment of \$30 to pay off her down payment loan. She testified that if she had known beforehand that she would have to make two payments totalling \$102.34 per month she would not have entered into the deal, and that it was her understanding all during the time she was on the dealer's lot that she would be paying solely the \$72.34 each month for her automobile.

Mr. and Mrs. Eugene Gentry, who appeared at the same hearing, testified that their understanding with the salesman had been that they would have monthly payments of \$76 to meet, and it was not until a later date, when they received a payment book from a loan company, that they discovered they had to make additional monthly payments of \$26 on a down payment loan. They had been told by the salesman that their total monthly obligation was to be \$76 and they insisted that they would not have consented to the deal had they known that they would have to pay more than \$100 each month.

MISLEADING ADVERTISING

The selling of automobiles is a very competitive business. Many dealers advertise extensively in newspapers and a smaller number advertise on television. So far as the committee is aware, the bulk of this advertising is perfectly honest and legitimate, but there are enough instances of misleading advertising to warrant consideration of the effectiveness of existing law in deterring its use.

(1) "No Down Payment Required"

The use of such advertising is described in the above section on "Side-Note Financing." As pointed out therein, such advertisements are not only deceptive per se, but are used as an integral part of the process of deluding a customer in the course of negotiating a deal with him. These advertisements generally include the words "on approved credit" in tiny type, and this condition enables the dealer to legitimately deny a customer the terms of sale which were used as the bait for attracting him to the lot in the first place.

(2) *"We Will Consolidate Your Debts"*

Incredible as it may seem, customers already heavily obligated with monthly payments on other retail items or services, believe that a dealer can sell them a car, consolidate the payments for it with the payments already being made by them on other items, and that the new single monthly payment will be less even than the total monthly payments already being made.

Richard Mitchell, who appeared at the May hearing, went to a particular dealer solely because of this type of advertisement, and the results in his case are illustrative of the use to which such advertising is put. Mitchell testified that since his wife had a baby and stopped work, their obligations, totalling \$1,300, had become too much for them. Although hesitant about buying a car because he could not see how his monthly payments could be reduced, the salesman assured him his bills could be consolidated and that he would not have to make any payments for 45 days, and sent him off in a new automobile—to a finance company. The finance company offered only to finance a \$400 down payment for the car, plus two outstanding bills of approximately \$100 each. Mitchell refused to sign for the loan since the great bulk of his bills were not to be included, went back several times to argue with the salesman, finally insisted that he be given back his trade-in. The salesman agreed, but, while Mitchell was waiting in the office, went out and repossessed the new automobile and continued to refuse to return Mitchell's old car—which would have been fully paid off after two more payments had been made.

It was obvious in this case that the dealer had no intention of, nor could he possibly, have arranged for the consolidation of the customer's debts. The fraudulent nature of this type of advertisement is also demonstrated by the determination by investigators of the California Department of Justice that "specimen" cases of how bills had been consolidated which were published in newspaper advertisements, could not be substantiated by the dealers upon investigation by the Department.

(3) *"Bargains" Not Available on Premises*

Investigations by the Los Angeles Motor Car Dealers Association and by the California Department of Justice, as well as testimony of complainants, has shown that automobiles shown on television on the dealer's lot with price tags on them, may not be available for that price upon inquiry in person at the lot. Likewise, inquiry in person in response to newspaper advertising listing specific automobiles at stated bargain prices, too often discloses that the particular automobile is no longer on the premises, or that it is in such poor condition that it is obvious that the advertisement was directed not to selling these automobiles but only to getting customers to the lot to be sold other, more expensive automobiles.

Richard Mrozek, who appeared at the August hearing, testified that he had gone to the dealer involved to see a station wagon described in an advertisement as being "in excellent condition" and accompanied by a photograph of the vehicle. On arriving at the lot, he was shown

the wagon in question. The grille, bumpers and back doors were all severely dented, and it "looked like it was just out of a wreck." Mr. Mrozek was subsequently sold a more expensive automobile.

Paul Weimer testified at the same hearing that he went to a dealer to look at a specific type of automobile advertised for \$2,195. He was told the automobile could not be sold for that price unless the company could get 12 percent interest on it. When Weimer complained that, had he known this, he would have borrowed the money to pay in full, he was told that the automobile could not be sold for cash.

TAKING OF TRUST DEEDS AS SECURITY

A small number of dealers induce, or trick, some of their customers into giving a deed of trust on their homes as security for the sale of an automobile. Since most customers are extremely reluctant to give this kind of security, the salesmen involved must generally resort to misrepresentation to obtain it. The testimony of two witnesses at the May hearing illustrate the manner in which a trust deed can be obtained and the use to which it can be put.

Mr. and Mrs. Eugene Gentry were told, when they attempted to purchase an automobile, that their credit was "okay" but not "strong enough," and that, in order to get the car they wanted, Mr. Gentry's parents would have to co-sign the contract and also give a third trust deed on their home in the amount of \$1,300. This security was to be released by the dealer once the Gentrys had proved their reliability by making \$1,300 in payments under the sale contract. When the Gentrys had made \$1,500 in payments, they inquired about the release of the deed and were told that it could not be granted.

Upon consulting an attorney, the Gentrys discovered for the first time that they had not been given a copy of a contract of sale, but rather of a lease agreement, and that under the agreement they would be paying almost \$4,000 in monthly installments over four years without getting a cent of equity in the automobile, and would have to pay an additional \$1,000 the fifth year to acquire title to the car. They filed suit, won a judgment on the grounds of fraud, and were awarded the payments they had made, return of the deed, and punitive damages. The dealer filed an appeal and, pending its outcome, refused to release the deed.

Meanwhile, the elder Gentrys, both unemployed and in their late 70's, sought to consolidate payments on their first and second deeds so that they could pay them off together from their monthly pension check in one reduced payment. Consolidation was prevented by reason of the outstanding deed held by the dealer, and foreclosure proceedings against the home were instituted.

Hazel Cary, who bought an automobile on a sale contract running for 60 months, and under which she was paying a total of \$2,784 for a vehicle whose cash price was \$1,645, was induced to give a deed as security only after she was virtually forced into a deal by reason of not being able to leave the lot because her old car had been hidden from her, and only after assurances from the salesman that this taking of the deed would not encumber her property in any way.

It is clear that, if a customer cannot satisfy the credit requirements of the bank or finance company which buys a dealer's contracts unless he mortgages his real property as security, he should not be entering into the transaction he is agreeing to enter. The holder of his contract has not only the security of the automobile itself, but of the buyer's home as well, and is enabled in this manner not only to look to the realty to satisfy its claims, but also to a deficiency judgment taken on the sale contract. The buyer is thus subjected to tremendous pressures not only to make his payments, but is also subject to effective harassment in any case where there is any sort of dispute or falling-out between the parties to a sale. A buyer who is unhappy with a sale in which he feels there is fraud or illegality involved, may be dissuaded from taking the legal action he otherwise might take for fear of losing his real property in the process. It is a situation probably not intended or even discussed by the Legislature when it first regulated the sale of automobiles.

A number of these problems involving the taking of a trust deed were summarized by J. Wallace McKnight, an attorney who appeared at the May hearing, who testified.

"Very often the buyer doesn't appreciate the significance of a paper like a trust deed when he signs it. And, having signed it, he presents, when he comes to an attorney, complaining about incorrect statements of down payment, or complaining that the monthly payments are in excess of what he expects them to be, he presents an entirely different problem to an attorney from what he would if that trust deed were not in effect.

"It places his home at stake * * * rather than the five or six hundred dollars down payment that he has made. And it is very difficult to advise a client what he can safely do.

"You can say to him, 'Well, now, if the judge believes you, then this will be declared illegal and unenforceable. But if the judge doesn't believe you, then you are risking your home.'

"Many buyers are afraid to take this risk. And also, a great many humble buyers think that anything that is in writing is binding upon them, no matter what they may say. So many, many people who have been victimized exceedingly are afraid to risk the consequences in court. And the consequences are increased when there is a trust deed involved.

"Also, I have known of a number of cases where the victim didn't know there was a trust deed. He signed papers, and he didn't find until later on that one of them was a trust deed."

SELLING OF USED AUTOMOBILES AS "DEMONSTRATORS"; ALTERATION OF MILEAGE TOTALS ON SPEEDOMETERS

Some dealers misrepresent used cars as being "demonstrators" and thereby command a better price for them. Some dealers, also, alter downward the mileage totals on used automobiles they acquire and represent them to customers as having traveled the lesser number of miles. The committee has no way of determining how often such alterations and misrepresentations are made, but its knowledge of even a few such cases, two of which are summarized below, indicates that

existing prohibitions of such fraud on the part of dealers and/or investigation and enforcement in this area by the Department of Motor Vehicles is not sufficient to deter these practices.

Miss Margie Regan testified at the May hearing that the Chevrolet she had purchased had been represented to her as a new automobile; that she had several times said specifically that she wanted only a new automobile, that she had noticed that the automobile already had license plates, but that the salesman had told her that another man had taken the car home with him overnight but his wife refused to go along with the deal and the vehicle was returned the next day.

One or two days after buying the car, Miss Regan noticed that the speedometer was not working and still registered the 29 miles it had on it at the time of purchase. The dealer replaced the speedometer. Shortly thereafter, upon being told by a repair shop that she should have received a new car warranty, she returned to the dealer and requested such a warranty. The request was resisted on the ground that, since the car had been taken home overnight, it was a used car, but the dealer finally agreed to give Miss Regan a warranty book.

When the automobile developed trouble a few months later on a trip to Utah, a service station manager refused to honor the warranty because he thought the car was not new, and another station manager subsequently told her that one of her tires was worn through to the cord and expressed surprise at such wear for a tire on a new car. Back in Los Angeles, Miss Regan checked with the Service Department of Chevrolet Division and was advised that her automobile had been used as a demonstrator model. When she subsequently came to the committee, inquiry was made of the Department of Motor Vehicles and it was discovered that the automobile had been sold, and registered, on two previous occasions and had, in fact, been repossessed from one owner two months after he had bought it.

Mr. and Mrs. Andrew Roman of North Hollywood advised the committee that they purchased a 1959 Buick represented to them as a demonstrator and showing 4,580 miles on the speedometer at the time of purchase. Upon taking it in for a lubrication and oil change shortly thereafter, they discovered a lubrication ticket on the door indicating that the automobile had last been served at 15,848 miles. On a subsequent visit to the dealer for repairs on the new car, Mr. Roman saw the 1955 Buick he had traded in for the 1959 model standing on the used car lot. He noticed that the speedometer indicated a mileage of 34,430 miles. At the time of trade-in, however, the older car, which had been purchased new by the Romans in 1955 and had been driven only by them since that time, had had a mileage of 57,436 on the speedometer.

The probable reason for most such situations as these, in which automobiles have been let out for some time, then reacquired and resold as new, is a result of sales tactics employed with a prior customer with whom an attempted deal has fallen through. In order to get a customer to feel that he is committed to a deal, a dealer will let him take the car off the lot for a night or perhaps a few days (called, in the trade, "putting the car out for a ride"), while the customer's credit is being checked. If the credit check is satisfactory, the dealer is in a better position to get the kind of deal he wants because the customer believes he is obligated by his use of the vehicle. (It is in circumstances such as

these that a dealer may have his greatest success in requiring a pick-up payment or in getting the customer's signature on a rewritten contract containing terms more advantageous to the dealer than those originally agreed upon) If the customer's credit is not satisfactory, the dealer takes the automobile back in and resells it as a new automobile when, actually, it has already been sold and registered to another owner

UNJUSTIFIABLE RETENTION OF DEPOSITS

Another abuse which should be mentioned is that of the retention by a dealer of a cash down payment or a small "faith money" deposit beyond the time when an attempted deal has failed of consummation, as a means of applying pressure on the customer either to go through with a transaction he does not want or to agree to another deal. A case in point is the following one from the files of the committee

Mrs. Ardra Cummings of Los Angeles went to a local dealer on December 14, 1959, to buy a used car. She saw one she liked and decided to purchase it. The price of the automobile was \$830, and she was asked to make a \$300 down payment. She explained to the salesman that she could only give him \$130 that day, he said to give him the \$130 and he would write the contract up and the finance company would pay her the remainder of the down payment, which would be included in the \$700 balance. She signed the contract, which was blank, and took the car home.

Mrs. Cummings had a great deal of trouble with the car. It stopped dead at every stop sign, the brakes did not work properly, and there were other things wrong. She took the automobile back to the dealer the next day and was told to leave it, and they would fix it up. She came back again the following day and asked if it was ready; they said it was, but this time it did not work at all and could not even be driven off the lot. She was then told she would have to go over to the finance company and sign some papers. She asked if that meant there would be two monthly payments to make, and the salesman told her there would be only one. When she asked why the papers could not be signed at the dealer's, she was only told they had to be signed at the finance company. She then said she would not do that until the car was fixed so that it would work. When she returned to the dealer two days later, the car was no longer on the lot.

Mrs. Cummings' statement concludes

"I still don't have the car and they're keeping my \$130. They won't give it back to me but tell me to buy another car, but I don't want to go and deal there any more because I don't trust them and I think it will be a case of being gypped again. They say the money will be there until I come in to purchase another car and I will have that much down on whichever car I buy * * *. I have been to see a lawyer through my union and I am told it would cost me more than the \$130 to get my \$130 back. My take-home pay is about \$62 a week, so if I can't get this money back from—, I'm out two weeks' pay."

A letter addressed to the committee chairman dated September 20, 1960, from the District Attorney's Office of San Mateo County, discusses the same subject and reads, in part, as follows:

"A survey of the complaints in our various offices indicates that the main difficulty with automobile dealers in this county arises from the use of 'come-on' transactions. In a typical case the purchaser makes a contract with a salesman at a certain fixed price, gives a down payment, and is told to return the next day. Upon his return, the purchaser is informed that the Sales Manager would not approve the transaction and that the price of the vehicle is actually more than previously agreed upon. *This leaves the purchaser with the alternative of paying the higher price or of having to fight for his deposit*¹ Where the deposit is cash, the situation is had enough. Where the purchaser has given the dealer his automobile and pink slip as a trade-in, the situation is very grave indeed, since the dealer refuses to return the trade-in vehicle. Usually the trade-in car is not of exceptional value and the legal fees entailed in regaining the car in a court action approximate either the value of the car or the difference in price demanded by the dealer. Although it may seem that it would take a gullible person indeed to be caught in the mesh of such a transaction, the incidence of this sort of transaction is all too frequent indeed. *Usually the customer ends up paying the increased price*²

"As far as a solution to the above problem is concerned, it is my opinion that it would be stopped if the automobile dealer were made responsible for the attorney's fees of the purchaser. In most cases it is the reluctance of the purchaser to pay an attorney's fee which makes him 'knuckle under' to the dealer's demands. If the dealers were responsible for the attorney's fees in automobile transactions, I feel that many of the abuses now so prevalent would be greatly diminished."

The committee has knowledge of several cases where buyers were asked to make small deposits (usually of \$25) before any deal at all was even discussed, and where the return of the deposit has been refused by the dealer when the customer failed to purchase an automobile. In none of these cases has the customer succeeded in retrieving his money.

ABUSIVE SALES TACTICS

The majority of legitimate complaints involving the sale of automobiles arise from transactions involving large-volume dealers who use high-pressure tactics to sell large numbers of automobiles, mainly to buyers in relatively low economic brackets. To a certain extent, the methods of doing business of the large dealers influence the methods of smaller dealers, many of whom must compete with the former to remain in business. The attitude of automobile manufacturers likewise fosters competition, because the manufacturers generally eliminate the smaller dealerships first in periods of retrenchment.

The fact that the automobile business is by nature a very competitive business naturally results in the employment of competitive sales methods. To the extent that such a situation strengthens the environment of free enterprise in that business, it is all to the good. To the extent,

¹ Emphasis added

² Emphasis added

however, that the bounds of honesty and fairness in dealing with the public are over-reached by some dealers, the respect and trust in which the public holds all car dealers is bound to suffer, and both the public and the honest dealers are hurt financially.

Some of the types of abusive sales tactics employed by some dealers are summarized below. These tactics are used for the purpose of creating a specific atmosphere in which a deal is to be transacted, an atmosphere in which the average consumer, unacquainted with sales methods other than the normal fixed-price retail situation with which he is familiar and to which he has become accustomed throughout his economic life, is put at an immediate disadvantage regardless of the integrity of the dealer. Where the dealer's sales force takes undue advantage of a customer, the latter is put at a truly great disadvantage.

(1) *Extended Period of Time of Negotiation*

Of the five complainants appearing before the committee whose testimony included statements of the lengths of time spent on the dealers' premises on the first visit there, the average time so spent was just over four hours. Most of the time was spent waiting—for the salesman to reappear from the back office with the verdict of whether or not the sales manager would accept the customer's latest offer. Generally, the wait extends far into the evening, or substantially past a dinner hour. The salesman who has disappeared is not, in fact, discussing the deal at such length with his superiors. He is purposely making the customer wait. After an hour or two by himself the latter will be anxious to get home, physically tired of waiting, psychologically tired of negotiating further at greater length, and will be more prepared to conclude an agreement and to make some concessions than he was at the beginning of his visit.

Evangelina Yateo testified, at the May hearing:

"We were getting tired. We wanted to get out of there because we had been there so long, so I kept on telling him [salesman], 'Let's go.' And he would discuss other things, and he tried to delay us."

"In other words, we were there waiting and waiting, while he kept on going out, and then he would come back in and we were so tired—"

Chairman Rees. How many hours did you spend there?

Miss Yateo. About five hours.

The five-hour delay was engineered primarily by the shutting off of Miss Yateo back and forth between two rooms and by having her sign numerous papers. When the time came for her to sign the final papers, she was induced to sign a blank contract since "the secretary had gone home and could not type up the contract until the next day." The blank contract blossomed into her subsequent difficulties.

Mr. and Mrs. Richard Mrozek were kept waiting on the lot from 6:30 to 11:30 on a cold, foggy April night in San Francisco with their two small, screaming children while their trade-in was being "appraised" (they did not see it again) and while their salesman was "called to the telephone" several times. The reason for the delay was to enable the

salesman to get their signatures on a series of contracts, the first of which was filled out and embodied the agreed-upon terms, the rest of which—signed late in the evening—were blank. They received a copy only of one of the latter, with terms different from and less favorable than those on the first contract.

(2) *Superfluous Documents*

The customer may be asked to sign several contracts, or sets of documents, during his visit to the dealer. Sometimes the papers are filled out; sometimes they are blank. In all cases, their use is a means of preventing the customer from knowing, at any given moment, whether he is bound on any contract and, if he is, what the exact terms of the contract are. It is also a means of inducing a customer to sign papers which he believes to be mere formalities, or complementary to a contract he thinks is already agreed to, but which in fact turn out to be themselves the final documents. Likewise, the customer may sign a completed contract whose provisions are to his liking, and be asked to sign additional papers stapled beneath it which are supposedly copies of the top paper, but which in fact are blank contract forms or even completed contracts with provisions different from those contained in the first paper. In general, the use of superfluous documents is similar to the use that can be made of purchase orders (*supra*).

(3) *Hiding of Customer's Automobile ("Bushing")*

Salesmen can increase the chances of their consummating a sale by depriving a prospective buyer of the automobile in which he drove to the lot. This can be done by telling the customer that the car has been taken away to be appraised (see Mrozek case, *supra*), or by simply driving the car out of sight and maintaining, if asked its whereabouts, that nothing is known about it. In either case, the customer may feel physically trapped on the premises; he certainly will feel that he must remain there until his car is returned. In both situations his physical presence will enable the salesman to continue trying to sell him a new automobile, and he probably will be psychologically more prepared to make a purchase than if he knew he could simply get into his old car and drive away.

Mrs. Hazel Cary testified at the May hearing that, after spending some time on the dealer's lot, she found the negotiations fruitless and disagreeable and undertook to leave the place, but that she could not find her own automobile (a Nash) and no one would tell her where it was. She could not get away.

Chairman Rees: When you wanted to get out and get in your car and drive away, you just couldn't find the Nash?

Mrs. Cary: No. I asked three times definitely, "Where is my car?" Because I wanted to get out and drive away. They said, "Well, I don't know where it is. Maybe so-and-so knows." And you couldn't find anybody around there. Nobody knew where anybody was, there are so many of them running around here, there and everywhere. You ask somebody and, "Oh, I don't know. Maybe he is over there."

At the end of two hours, Mrs. Cary bought a new automobile, signed the papers and immediately thereafter got into the new car to drive

home. Already inside, neatly piled on the front seat, were all the personal effects that had been in the trunk and glove compartment of her old, missing Nash

(4) *Miscellaneous Sales Methods*

Robert Fall, Secretary-Treasurer of Automobile Salesmen's Union Local 1056 of the Retail Clerks International Association, AFL-CIO, testified at length at the May hearing concerning the sales methods employed by some dealers and salesmen with whom he was familiar, and also talked at length with the committee staff at other times about various other aspects of the same subject. His point of view, of course, was that of the unionized salesman, and he spoke of the squeeze in which some salesmen find themselves as only one of a number of dealer representatives to be involved in a single transaction. Whereas an honest salesman would like to be in a position where he is basically a seller of automobiles and an expert on customers' automotive needs, and where he is paid a guaranteed salary, he may find himself having to push financing and insurance as well, or he may also find himself having to split his selling and, consequently, his commissions, with other personnel whose primary job is to sell the financing or the insurance.

Mr. Fall described the TO or "take-over" system under which some dealerships operate. When a customer comes in and tells the salesman he wants 100 percent financing, or wants to consolidate his debts, the salesman writes up the best deal he can get and then takes the buyer to a TO man

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 "So they write up this deal and he picks this car out and he takes him to the TO man. Now, the TO man sets up the deal by finding out just how far he can go with the fellow. In the meantime, even though the salesman knows that this sale is a cinch sale, he has to take it to the TO man, who takes a cut of his commission. But that isn't enough. They are not going to let the salesman get away so easy, because this is an easy pigeon. Why let the salesman have all the gravy?

"So they are going to take this guy to the finance manager who takes another cut for getting a loan for this pigeon who could go down and get a loan for himself. They even charge the salesman for the customer getting the loan.

"The customer has to pay for the loan, too, but they charge the salesman for it. So this is how the TO system works."

A customer who shops at a large-volume lot will often find himself involved with two or more salesmen. Different salesmen will offer different terms to him and extract different offers from him, so that he is unsure finally just where he stands and with whom. He may find that he has reached an apparent agreement with one salesman only to have another bring a contract embodying other terms for his signature. It is all a way of keeping a buyer off balance and of confusing him with respect to the responsibility and authority of any single individual with whom he has been dealing.

The shift from one salesman to another may be casual and apparently happenstance, as when a second salesman appears and apologizes for the other's absence. "Joe was called to the phone on another deal he is working on and asked me to help him out with you folks for a

while " Or it may be made very obvious, as when the first salesman, unable to get quite the deal he wants, calls to another to take over: "Bob, come over here for a minute, will you. Maybe you'll have better luck with these people than I have. I've chopped their payments down as much as I possibly can and I'm cutting my commission in half to get them the deal they said they wanted, but now they don't seem to like it any more. Maybe you can work something out with them." Salesman No. 1 walks off in anger, leaving the customers feeling upset and wondering whether they have not, after all, been a little unreasonable with them. Salesman No. 2 is very pleasant and understanding, and affords them the opportunity to redeem their good standing by reaching a fairly quick agreement.

A few dealers resort to the use of small customer booths that are piped for sound ("hot boxes") to help them land their customers. The booths are used as a means of ascertaining the customer's thinking and frame of mind, and to capitalize upon that knowledge. For example, the salesman is attempting to write a deal that calls for monthly payments of \$100, but he is not yet successful and he is not certain how near he may be to reaching a satisfactory agreement of any kind. He excuses himself for a few minutes, leaving his customers alone in the booth to talk among themselves, and goes into a back office to listen to them. He hears a conversation that concludes with the wife's agreeing: "If we can pay \$85 a month, it's OK with me. That way we can make these payments all right and still get by with the furniture loan also." The salesman soon returns to his customers, armed with the knowledge of their private thoughts, and asks whether they could afford "about \$85 a month"? He has figured out that a 30-month contract at \$85 a month is a little better even than the 24-month contract at \$100 a month he was trying to write, and his customers, who had been thinking only of their monthly obligation and not at all of the possible term of the contract, are pleased to learn that the salesman is offering the very terms they themselves had previously decided would fit in with their budget. It does not occur to them to bargain further, and they jump at the opportunity to conclude the deal on their own terms.

THE STATE OF THE LAW, SOME DEFICIENCIES AND AMBIGUITIES

There is mention at several earlier points in this report of the primary reason for the prevalence of some of the abuses in the field of automobile sales and financing. The reason, stated in general terms of effect, is that sellers are not deterred by present law from indulging in the various types of malpractice discussed above, and buyers are discouraged by present law from seeking legal redress when they feel they have been wronged. The following sections delineate, in specific terms of cause, some of the inadequacies of the law as it is presently written in California.

(1) *Attorney's Fees and Court Costs to Prevailing Party*

All contract forms provide for the payment of attorney's fees and court costs by a buyer when the seller institutes suit against him to enforce a sale contract, but there is no provision in the law that awards such fees and costs to a buyer who prevails in a suit to enforce his

rights under such a contract, or who successfully defends a suit by the seller on the ground that the contract is unenforceable. The Unruh Act of 1959 does provide that the prevailing party shall be awarded attorney's fees and court costs, and the lack of a similar provision in Civil Code Section 2982 seriously hampers the buyer's chances of obtaining justice.

Automobile dealers make a practice of fighting all cases brought against them. They refuse to settle them and, if they lose in the trial court, they invariably file an appeal. They fight these cases for three reasons. (a) they know they are likely to win, but know also that, even should they lose, they are unlikely to end up paying more on an adverse judgment than they have already received from the buyer; (b) they fight them, as a matter of principle, to serve notice on attorneys who handle such cases on behalf of buyers that they will, regardless of the merits of the case, be involved in lengthy, expensive, time-consuming litigation; (c) they may already have paid an attorney an annual retainer fee and it will probably cost them little or nothing extra to contest this particular suit.

Few lawyers are willing to undertake the case of a potential buyer-client even though the latter may have an apparently sufficient cause of action. The buyer is more likely than not unable to pay a reasonable fee in advance, and a contingent fee arrangement is unacceptable because it will be a great many months before judgment can be obtained and collected. Even should the buyer be able to pay in advance, his judgment, if obtained, will probably amount only to several hundred dollars and the attorney cannot charge him more than two or three hundred dollars for his services—and such a fee still will not be sufficient compensation to the attorney for the time he will have to spend preparing the case and taking it to trial.

Testimony concerning this problem was given at the May hearing by V. Lane Knight, an El Segundo attorney.

"One man, Leonard, bought a car and the price was \$3,200, after it has been jacked up with the various finance charges. And he had paid for a year and he still owed \$2,800. His father got sick and he couldn't pay, so the finance company came out to repossess the car. And he had an independent buyer who would pay him \$2,200, but he still owed \$2,800, so he would have to dig up \$600 to sell it in an independent deal.

"So they repossessed the car and spent some money on it and sold it for less than \$1,500 and billed Leonard for \$1,300 and threatened to garnishee his wages. (Refer to the subsection on "Notice of Resale" in the section entitled "Insufficient Protection for Buyer in Default"; here is a case in which a public sale would probably have brought \$700 more than did this private sale.)

"Leonard came to me and I made one call to the finance company and they said, 'We will take \$300.' My arithmetic just doesn't work that way. It is obvious that their point is that they just want barely above an attorney's fee. Just so that Leonard isn't going to save much by suing, or by defending.

"Most of the clients or prospective clients who have come to me have been gypped by less than \$150, \$200, just so that the customer can't afford to do anything about it. Some of them get so mad that they will pay my fees, win, lose, or draw."

For these reasons, a wronged buyer, whose loss is likely to be only a few hundred dollars, may find it difficult to obtain an attorney and will be dissuaded from taking any action at all. The implications arising from this situation are important. Firstly, the intent of the law will not be effectuated if sellers know in advance that the risk of financial loss arising from their disregard of the law is small. Secondly, if the Legislature is serious about its attempted protection of the automobile buyer and is unwilling to provide effective means of self-help through legal processes for the wronged individual, it will have to implement its laws by providing for the intervention in this area by governmental agencies such as the Department of Motor Vehicles, Consumer Counsel, or Department of Justice. It is submitted that the preferable way of affording protection to the individual is to arm him sufficiently so that he is enabled to prosecute his own cause in the courts.

(2) *The Measure of Recovery*

Civil Code Section 2982(e) provides

"If the seller, except as the result of an accidental or bona fide error in computation, shall violate any provision of subdivisions (c), or (d) of this section the conditional sale contract shall not be enforceable, except by a bona fide purchaser for value, and the buyer may recover from the seller in a civil action the total amount paid on the contract balance by the buyer to the seller or his assignee pursuant to the terms of such contract."

Subdivision (c) establishes the maximum permitted time price differential, or finance charge, and subdivision (d) provides for a refund credit to a buyer who satisfies his indebtedness under the contract prior to its maturity, and specifies the permissible minimum amount of such refund credit.

Although Section 2982(e) applies by its own terms only to violations of subdivisions (c) and (d), the courts have held that a violation of any of the provisions of subdivisions (a) and (b) shall also render the contract unenforceable and that a buyer who has made payments to the seller under such a contract can recover them [*Carter v. Seaboard Finance Co.* (1949), 33 C. 2d 564]. Subdivision (a) requires that the contract be in writing, with specified contents, and that an exact copy be delivered to the buyer; subdivision (b) requires the seller to furnish the buyer who pays for insurance under the contract with an exact copy of the insurance policy.

Some of the ambiguities of Section 2982 have been resolved by the courts. Absent the holding of the *Carter* case, for example, there is no penalty provided by law where a seller entirely disregards the substantial and specific requirements of subdivision (a). The courts have likewise clarified omissions in the law by holding that the items required by that subdivision to be included in the contract must be stated in the contract at the time the buyer signs it, and that the

successful buyer may recover from the seller not only "the total amount paid on the contract balance," but also the amount paid by the buyer as down payment and the market value of his trade-in, if any [*City Lincoln-Mercury Co v Lindsey* (1959), 52 C 2d 267]

However, subdivision (a) remains ambiguous, as noted in the section on "Failure to Deliver Fully Executed Copy of Contract at Time of Sale," *supra*, in that it does not require that a copy of the contract be given the buyer until it is fully executed regardless of when the seller finally executes it

Despite this judicial surgery, the present law remains inadequate and ambiguous. The most important of such areas are described below.

(a) **The Dealer's Offset.** Because Section 2982(e) provides that a contract is not enforceable only when the seller has violated provisions of subdivisions (c) or (d), the courts, in extending the application of this penalty to subdivision (a) and (b), have differentiated between the two latter subdivisions and the two former ones. The requirements of subdivisions (a) and (b), which are designed to enable the buyer to know just what his deal is, have been termed "formal"; the requirements of subdivisions (c) and (d), which are directed at excessive charges which are akin to usury but to which, by common law, the usury statutes do not apply (because a finance charge is only a charge for the extension of credit but is not compensation for the loan of money and, therefore, not "interest"), are termed "substantive"

A seller who is guilty of intentional "formal" violations is allowed an offset against the buyer's recovery "in an amount representing the depreciation in value of the car occasioned by the use made of it by the buyer while in his possession, which necessarily excludes any allowance for depreciation resulting from a general decline in the market value of such automobile during the period in question" [*Williams v Caruso Enterprises* (1956), 140 Cal Ap 2d Supp 973]. A seller who is guilty of intentional "substantive" violations is penalized by not allowing him an offset

The courts are not only hesitant to prescribe a harsh penalty for violations of subdivisions (a) and (b) (for which the Legislature has neglected to provide *any* penalty), but they also seem to believe, and the terminology of their dichotomy itself implies, that violations of the "substantive" requirements of subdivisions (c) and (d) are more serious than violations of the "formal" requirements of subdivisions (a) and (b)

The opposite is true. Many of the practices described in the sections above have to do with matters regulated by Section 2982(a) and (b), but none relate to the matters regulated by Section 2982(c) and (d). Those practices which are illegal are so because they are violations of 2982(a), but not of the other subdivisions of Section 2982. The reason is, obviously, that the many facets of writing a sale contract where there is room for abuse are mostly covered by the "formal" requirements of the law, and not by the "substantive" requirements. However, the apparent complete lack of violation by dealers of the provisions of subdivisions (c) and (d) may well be because the courts will not allow an offset to the dealer in such cases—and therein may lie a moral

Why does the law, as it has been interpreted by the courts, fail to prevent sellers from violating the "formal" provisions of Section 2982? Why does the allowance of an offset to a seller who has violated those provisions make it impossible to deter him from violating them in the first place? There are a number of explanations. To begin with, a dealer knows in advance that should he violate the law, and should the buyer not be discouraged from going to court to seek redress (as he usually is), and should the dealer eventually lose the case, even then he will, as the guilty party, be allowed an offset by the court against the judgment recovered by the buyer. He even knows that should he be found by the court to be guilty of outright fraud, rather than of a violation of the statute regulating the sale of automobiles, that he will be allowed such an offset [*Dube v. Kelley Kar Co.* (1959), 171 C.A. 2d 862]. He knows that the rule of the *Williams* case, *supra*, under which the amount of offset is to be determined, is unclear and must be interpreted by each trial judge to the best of his ability, and he knows further that the judge is likely to be impressed with the testimony concerning "depreciation in value" given by expert witnesses to whom only the dealer has ready access. And he knows that the mere existence of the case law granting the offset will lead many lawyers to advise their clients in the first place that to file suit will be a risky and uncertain venture at best.

The testimony of attorney J. Wallace McKnight at the May hearing described the buyer's predicament:

"A buyer goes in with \$1,000 cash. He takes a new car out. He signs a contract in blank. A few days later he gets a copy of the contract showing that the payments are \$50 a month more than he expected. This is common.

"So let's say that only three days have passed, and he goes to an attorney and he tells the attorney, 'I have given him \$1,000. I can't make these additional monthly payments, which are \$50 higher. What shall I do?'

"The attorney says, 'Well, the contract is illegal. You have a right to recover from the dealer.'

"And the buyer says, 'Fine. I will go get my \$1,000.'

"The attorney has to say, 'Well, now, I can't say you will get \$1,000. In fact, I can't say how much you will get, because from that \$1,000 they can withhold something which we call the offset. And this offset which they can withhold is the depreciation in the value of this new car.'

"And he will say, 'Well, how much is the depreciation of the value of this car?'

"And the attorney must say, 'Well, it depends upon what the expert witnesses will say, and whether the judge will believe the expert witnesses.'

"And he has to say, 'It will also depend on an element which hasn't yet been decided by any of the California courts: whether this depreciation shall include the drop in value which occurs when the new car becomes a used car.'

"Now, I have had expert witnesses swear on a stack of Bibles that a car loses \$1,000 the minute it is driven off the floor and

goes into the name of a person and becomes a used car. Now if this is a fact, and certainly expert witnesses can testify to it, and the judge may believe them or believe any place in between, so the man has to be told by the attorney that, 'You may lose that whole \$1,000 that you paid to them three days ago because that car now is a secondhand car.'

'And this is small consolation to the victim, who thought he was signing up for \$100 monthly payments, and the finance company expects him to pay \$150 a month.'

Chairman Rees. Just a minute. You are saying, Mr. McKnight, that even if there is a violation on the seller's part, if he gets the contract in blank, which is prohibited by California law, then fills it in after it has already been signed by the buyer, fills it in with things not agreed to by the buyer, the buyer brings a suit and, under your case, he would take a loss of about \$1,000 for his trouble in bringing a suit after he won the suit?

Mr. McKnight. He would take a loss in an unknown sum which could easily be \$1,000, or could be more than \$1,000. I have conceived that an expert witness might testify that a Cadillac would lose maybe \$2,500. I mean, he would be exaggerating, but I have seen—where would I get an expert witness to testify to the contrary?

Now, if an offset must be allowed, which I don't think it should be at all—whenever there is an offset allowed, it is going to encourage the dealers to refuse to give back the trade-in, and to give back the money, because they have got such a good chance of winning. But if they are going to be allowed some kind of an offset, it should not include the drop in value caused by that car leaving the sales floor and becoming a used car.

The present state of the law, therefore, presents two serious problems to the buyer whose contract is illegal or fraudulent and who is dissatisfied with this state of affairs. He knows that should he successfully prosecute a civil action, the offset allowed the dealer may be so large, or nearly so large as the payments he will recover from him, and he will thus end up with no car at all and very little or no money to show for it. He knows also that the law as it now stands is so vague and uncertain that the results of a successful suit cannot be known, or even reasonably appraised in advance of the judgment itself, and the dealer has everything to gain and nothing to lose in fighting the case as long as he possibly can.

(b) **The Value of the Trade-in.** Although Section 2982 does not categorically provide for the recovery by the buyer, in the case of an unenforceable contract, of the value of the automobile given to the dealer as a trade-in, the courts have held that the value of the trade-in may be recovered in such a case. The amount that may be so recovered, however, has been held to be not the value ascribed to the used automobile by the parties to the transaction at the time of sale, but the market value of the trade-in [*City Lincoln-Mercury Co. v. Lindsey, supra*].

The fact that the courts have limited the amount of the buyer's recovery to the market value of the trade-in has had the same effects as the

courts' allowing an offset to the guilty seller there is a built-in compensation for the seller, and the amount of recovery by the buyer is impossible to predict prior to the trial itself

Many buyers agree to a deal only after shopping around to see which dealer will give them the best price for their old car; many others, who are, to begin with, hesitant about buying a new car, are successfully sold one primarily because they are offered an attractive price for the automobile they already were driving. In short, the price allowed on the trade-in is as important a figure to many buyers as the cash price of the new car or the amount of their monthly payments, and they would not have bought the new car had they not been given an allowance of X dollars for their old one. The same buyer will find, however, when he goes to court because of some fraud involved in the sale of the new automobile, that the trade-in allowance agreed to by the dealer and himself is no longer of consequence and will not be considered by the court in the process of its determination of what his recovery will be.

A case handled by J. Wallace McKnight, and concerning which he testified at the May hearing, is illustrative of this problem. McKnight's clients traded in a one-year-old Mercury toward the purchase of two other cars. They were told they would be allowed \$2,900 for their Mercury, which was a fair price. When the contract was signed, it was admittedly blank, but the purchase order had initials at the various places where figures were to be written in. The dealer and the salesman swore in court that the figures were filled in on the purchase order. The buyer and his wife swore that the figures were not filled in, but that they were just asked to initial those places on the order where the figures were supposed to be placed. One such figure was to be the \$2,900 allowance for the trade-in. The buyers were also supposed to raise an additional cash down payment on a side loan, but before they signed the side-note for that loan, they received a copy of the sale contract in the mail and noticed that it allowed them only \$1,900 for their trade-in. McKnight advised them not to use their new car, but to put it in storage, and to send a notice demanding their old car back. This demand was sent within eight days of the time of sale, and it was refused by the dealer.

"When we got into the trial, they didn't get \$2,900 for that. The dealer, of course, went ahead and sold their trade-in car, so that they had to sue for the value of it. But they didn't get the value at \$2,900. They got the value at \$1,900. There was \$1,700 due on the car, so * * * they lost possession of that one-year-old automobile and got out of it only \$200, which is useless. With that automobile they could have made a down payment on any other car. But with \$200, they are afoot. They have to walk.

"So this new decision by the Supreme Court provides that this down payment shall be compensated for at the retail market value. Well, here you have to rely on the opinion of expert witnesses * * *. And I think that the dealers will always be encouraged to litigate every one of these cases * * * because they have such a good opportunity of winning through these uncertain elements.

"For example: the value to be placed on the car that was traded in is anybody's guess, and they can produce witnesses who will

say it was worth very little. And the buyer is stuck with it. The buyer can say, 'Well, I thought it was worth so-and-so.' And they may have agreed that it was worth * * * \$2,900 But according to this you can't tell what they agreed to.

"Now, I think that the law should provide that the buyer, if he has been imposed on by a violation of 2982, should recover the value which was placed on the car by the parties; the value for which he was willing to part with possession of it, and not be forced to take some other value which would be placed on it by expert witnesses "

(3) *Regulation by the Department of Motor Vehicles*

Civil Code Section 2982, which alone regulates the sale of automobiles in California, prescribes no penalties other than those of unenforceability and recovery of payments discussed in the sections immediately above. Motor vehicle sales statutes in other states such as New York, New Jersey and Pennsylvania, on the other hand, provide that intentional violation of any of the provisions of the respective sales statutes shall constitute a misdemeanor and be punishable by fines of up to \$500. The New York, New Jersey and Pennsylvania statutes also provide that a dealer's license may be suspended, revoked or refused renewal if the licensee has, among other things, violated or failed to comply with any of the provisions of the sales act.

In California, all dealers must be licensed with the Department of Motor Vehicles, and that department exercises what control the State has over the sale of automobiles. However, neither the extent of such control, nor the ability and willingness of the department to exercise it is entirely clear. The few provisions of the California Vehicle Code relevant to this study are discussed below.

A dealer, before his license is issued or renewed, must procure and file with the Department of Motor Vehicles a bond in the amount of \$5,000, to cover any fraud practiced or fraudulent representation made by the licensee that causes monetary loss to a purchaser, seller, financing agency, or governmental agency [Vehicle Code Section 11710]. Many persons, including Mr. Lobby of the San Francisco Better Business Bureau, have told the committee that the bond is clearly insufficient in amount, in that two or three fraud cases involving the same dealer could easily consume the entire amount of the bond. It is inadequate, too, in that it does not cover monetary losses suffered by persons because of a violation by the dealer of any of the provisions of Civil Code Section 2982 unless, of course, there is fraud or a fraudulent representation involved.

Vehicle Code Section 11711(a) provides that any person who:

"shall suffer any loss or damage by reason of any fraud practiced on him or fraudulent representation made to him by a licensed dealer or one of such dealer's salesmen acting for the dealer, in his behalf, or within the scope of the employment of such salesman; * * * such person shall have a right of action against such dealer, his said salesman, and the surety upon the dealer's bond, in an amount not to exceed the value of the vehicle purchased from or sold to the dealer "

The following colloquy took place at the August hearing:

Assemblyman O'Connell: I am wondering what Section 11711 of the code is for? It is a section that provides that if a person suffers any loss by reason of fraud by a licensee, he has a right of action against the dealer; is that not the same right that he has under Section 2982 of the Civil Code?

Mr. Al Veglia (Registrar of Vehicles, California Department of Motor Vehicles) I think so

Mr. W. P. Scanland (Chief Investigator, California DMV): It does afford an action specifically against the surety on the dealer's bond.

It is apparent, therefore, that Section 11711 does not provide a buyer with a cause of action he does not already possess. It does specify that a defrauded buyer may sue upon the bond required by Section 11710, although the latter section, by stating that the bond is for the protection of such a buyer, itself impliedly grants the cause of action. Whether or not, however, Section 11711 limits the recovery by a buyer in a suit brought not under 11711 but upon general grounds of fraud, to an amount not to exceed the value of the vehicle, is not clear.

The most important relevant section of the Vehicle Code is Section 11713, which provides that it is unlawful and a violation of the code for any licensee to commit any one of a number of specified acts, among which are the following: the publishing of misleading or inaccurate advertising, the advertising or offering for sale of any automobile not actually for sale at the dealer's premises; the advertising or representing of a used vehicle as new; and the employment of any person as a salesman who has not been licensed as such.

Mr. Veglia testified that if a buyer files suit against a licensed dealer under Sections 2982 or 11711, and as the basis of the suit charges a violation of Section 11713, the dealer could be prosecuted under the latter section by the district attorney's office or by the Department of Motor Vehicles. The Department of Motor Vehicles could also take disciplinary action against a dealer's license under Section 11713. If, however, the buyer's complaint was strictly a civil matter (i.e., not covered by Section 11713), the department would take no action until and unless the courts have determined that the buyer was civilly injured.

Prosecutions for the commission of a misdemeanor are infrequent and ineffective. Two recent cases filed by the department against dealers have been dismissed on the ground that the dealers, both of which are corporations, were not criminally liable for the acts of their employees. Furthermore, as Mr. Scanland testified, "our experience with most district attorneys has been that they are extremely slow to entertain a complaint under this section [11713]."

The end result of all the above is that the present law is effective only in that it provides the Department of Motor Vehicles with the power to seek disciplinary action in a hearing under the Administrative Procedures Act where the licensee has violated Section 11713. The law is not effective in providing for criminal action even under that section, and it makes no direct provision at all for the department's

intervention in the great majority of cases where the only complaint is that of a violation of the provisions of Section 2982.

The ambiguity of the general situation was summarized in the ambiguity of Mr. Veglia's introductory remarks to the committee:

"The Department of Motor Vehicles has not had a considerable amount of trouble. We have had some problems in policing the industry, and I think that our authority within the Vehicle Code is really not as spelled out, or not spelled out as clearly as it could be, but I think that in general it is adequate."

And reason for concern over the department's enforcing of what law there is was indicated by Mr. Veglia's parting remarks, in response to questions by a member of the committee:

Assemblyman O'Connell. May I ask you this: Do you intend to ask the Legislature for any additional appropriations for more staff to administer the new law which was given effect in July of this year [1973]?

Mr. Veglia. Mr. O'Connell, this is the policy of the Department of Motor Vehicles, to not increase its budget request at all.

Assemblyman O'Connell. You just told us that you do not have sufficient staff now to vigorously enforce the law; is that not correct?

Mr. Veglia. We could more vigorously enforce the law if we had a greater staff, this is true.

Assemblyman O'Connell. But you do not intend to ask for more appropriations?

Mr. Veglia. We do not.

GENERAL CONCLUSIONS

1. A small minority of automobile dealers are conducting their businesses in such a manner as to endanger public trust in the doing of business by all dealers, and as to inflict serious economic suffering upon their consumer victims. These few dealers are responsible for virtually all of the valid complaints received and reviewed by the committee.
2. The abuses uncovered by the committee include unethical business methods, fraud, and violations of existing California law purporting to regulate the sale of automobiles.
3. Where existing law provides a wronged individual with a legal remedy (as in the case of fraud) or with a legal defense (as in the case of violation of provisions of the Civil Code governing the sale of motor vehicles), such an individual seldom avails himself of those legal rights and remedies because they are generally too expensive and of too little practicable value to him to be worth his while to pursue.
4. Existing provisions of the Civil Code (Sections 2981 and 2982) which regulate the sale of motor vehicles are ambiguous in part, are lacking in part in that they do not cover all aspects of such sales, and are ineffectual in general in that they do not provide a

great enough incentive for parties to such sales to comply with the provisions of the code because the penalties provided are insufficient to deter noncompliance by dealers or to encourage the seeking of legal redress by the wronged purchaser. In sum, existing law is not effective in preventing practices proscribed by such law, and does not purport to proscribe other practices which require regulation.

- 5 New legislation to remedy deficiencies in existing law is necessary if California is sincere in attempting to extend to automobile buyers protection analogous to that provided purchasers of other types of personalty on retail installment contracts, or even the protection envisaged in the existing law regulating motor vehicle sales.
- 6 The penalties provided for in Civil Code Section 2982(e) should be made applicable to violations of all other subdivisions of that section, rather than only to subdivisions (c) and (d), as is now the case.
- 7 There should be provision made for a uniform statewide sales order form to be used by all sellers in all transactions involving the sale of a motor vehicle.

REPORT OF LENDING INSTITUTIONS SECTION

Following the last session of the Legislature, it was determined that the Assembly would benefit from more background in order to give adequate judgment to the many requests for changing statutory limits for lenders in the field of consumer credit.

The Lending Institutions Section, holding two hearings, engaged in a systematic, parallel study of interest rates and charges which may be imposed by the various types of lenders under California law.

The first hearing was held on January 28, 1960, in Room 5168 of the State Capitol Building, Sacramento.¹ Witnesses included Franklin Harding, California Savings and Loan League, Robert A. McNeil, Independent Mortgage Bankers Association, Donald McClure, Assistant Commissioner of Real Estate, Mrs. Helen Ewing Nelson, Consumer Counsel to the Governor, George D. Nickel, California Loan and Finance Association, Richard Groulx, Alameda County Central Labor Council, Clarence E. Murphy, California Credit Union League, Robert B. Donohue, California Association of Industrial Loan Companies, John Gilchrist, Collateral Loan Association of California, and James E. Denebeim, Commonwealth Thrift Company.

This hearing dealt primarily with those lending institutions other than commercial banks.

Another hearing was held on June 24, 1960, in Room 1194, State Building Annex, San Francisco.² The subject was consumer lending as it is affected by the commercial banks of California. Witnesses appearing were Philip Gregory, California Bankers Association, J. O. Elmer, Wells Fargo Bank—American Trust Company; E. L. Cumpston, Crocker-Anglo National Bank, Miles J. Rubin, Deputy Attorney General, D. Z. Albright, Security First National Bank; L. M. Schaefer, California Bank; William H. Pratt, First Western Bank, A. F. Wagele, Bank of America, and Paul Martin, National Automobile Salesmen's Club Organization.

On the basis of public hearings, various interviews with representatives of lenders and regulatory bodies (e.g., the Federal Reserve Bank of San Francisco),³ as well as research by the committee staff, the Lending Institutions Section presents the following conclusions:

1. THE HISTORICAL CONTEXT OF INTEREST REGULATION

The legal rate of interest at early common law in California was governed by custom. Later, the Legislature provided that parties are free to contract for a loan at any rate of interest, and as a result,

¹ Participating were Assemblymen Ronald B. Cameron, Harold K. Levering, Bruce V. Reagan, Thomas M. Rees, Howard J. Thelin, Jesse M. Unruh, Jerome R. Waldie, and Bert DeLotto, Chairman.

² Participating were Assemblymen Ronald B. Cameron, Harold K. Levering, John A. O'Connell, Thomas M. Rees, W. Byron Rumford, Howard J. Thelin, and Bert DeLotto, Chairman.

³ Participated in by Assemblyman Rees as well as subcommittee chairman, Mr. DeLotto.

the California Supreme Court held in 1888 that "The illegality of usury is wholly the creature of legislation."⁴ Thus, rate regulation became the subject matter of specific legislation, as interpreted by the courts.

In both the case of the credit sale and the small loan, the courts established theories under which the usury laws could be avoided. In the case of the credit sale, the "time price doctrine" has been followed, in the case of the small loan, "interest" was distinguished from "charges."

Although these concepts were adopted to provide the consuming public with small loans and credit sales where the legal interest rates were inadequate to provide for these needs, abusive practices resulted from the application of each of these concepts. In the credit sale, the buyer purchased goods on credit from the seller which included usurious interest concealed under the label of "time price" which was paid to the financing agency to whom the seller sold his contract. In the small loan case, various brokerage systems were developed to require the borrower to deal with one party who demanded usurious "charges" to obtain the loan from another party who exacted "interest."

These abuses have resulted in legislation to provide regulation of small loan transactions not within the scope of the usury laws and to include within the scope of regulation both brokers and lenders. The Unruh Act provides legislation relative to retail installment transactions involving household articles.

Until 1918, California had no general usury law. An initiative measure was passed, known as the Usury Law, which set a maximum contract interest rate of "\$12 on the \$100 for one year." Without a contracted rate, the maximum interest was "\$7 on the \$100 for one year". In addition, Section 3 of the act regulated the maximum amount that a lender could receive on a loan, and regulated charges and expenses of loan brokers. In *Wallace v. Zimman*,⁵ the California Supreme Court held Section 3 to be unconstitutional on grounds that the classification was unreasonable, and because the constitutional requirement that the subject matter of the section be included in the title of the act was not satisfied. The latter reason was based on the distinction between "interest" and "charges." The court felt that the subject matter of the act was usury, which regulated *interest* only; and therefore any attempt to include regulations upon other *charges* was unconstitutional. However, the provisions relating to maximum interest rates were sustained.

This construction led to a successful evasion of the 1918 Usury Law. A brokerage system developed wherein the broker handled the loan for the borrower and charged a fee for his services. His fee was regulated by the act.

A constitutional amendment was enacted in 1934 which reduced to 10 percent per annum the maximum interest allowable and excluded special groups of lenders from coverage.⁶ It would appear that the first two paragraphs of this amendment correct the flaws of the 1918

⁴ *Coleman v. Communs*, 77 Cal. 548, 554.

⁵ 200 Cal. 585.

⁶ CAL. CONST. Art. IV, Sec. 24.

Usury Law.⁷ However, the courts have continued to make the distinction between "interest" and "charges"

The 1934 amendment resulted in taking away all regulation of the exempted lenders. The courts have interpreted the amendment as freeing the exempted lenders from the restraints imposed upon them by the rigid provisions of the 1918 Usury Law and allowing charges more appropriate to business conditions of each type of lender.

In the field of small loan legislation, the first classification of lenders to be regulated under California law was that of pawnbrokers. In 1861 the legislation went into effect. Further legislation was passed in 1905, but was held to be unconstitutional. The defects were cured in 1909 with the passage of the first Personal Property Brokers Act. This act, together with the 1911 amendments, defined personal property brokers as those in the business of loaning money on the security of personal property, the possession of which is retained by the borrower, or on the security of wages, and provided for a maximum rate of 2 percent per month.

In 1931 a new Brokers Law was passed which provided for licensing and an interest limit of $3\frac{1}{2}$ percent per month on secured loans of \$300 or less. Subsequent litigation held the licensing provisions valid, but the rate limitation invalid as being in conflict with the 1918 Usury Law. However, an attempt to regulate the abuses of the brokerage system was made by requiring the licensing of brokers and subjecting their activities to the supervision of the Commissioner of Corporations. The commissioner's powers included the suspending, amending, and revoking of brokers' licenses. However, there were no provisions made for the regulation of the fees of such brokers.

In 1934, personal property brokers were freed from the limitations of the 1918 Usury Law and, as a result, were allowed to charge any rate they pleased. The brokers remained unregulated until 1939, when Brokers and Small Loan Laws were passed. Both the acts were patterned after the sixth version of the Uniform Small Loan Law. The Brokers Law applied to secured—and the Small Loan Law applied to unsecured—loans. Both acts provided for maximum interest rates at $2\frac{1}{2}$ percent per month on the first \$100 of principal, and 2 percent on the principal balance up to \$300.

In 1945, loans of \$5,000 or more were exempted from certain provisions of the Brokers Law. In addition, the scope of the definition of "personal property broker" was enlarged by removing a prohibition against the taking of real property as security. In 1949, the maximum rate under the Brokers Law, which formerly was \$300, was changed to \$5,000.

In 1951, the Brokers Law and the Small Loan Law were amended and codified with other laws relating to financial institutions in the new Financial Code which designated them as the "Personal Property Brokers Law" and the "California Small Loan Law." In 1955, certain credit card transactions were exempted from the Small Loan Law. In 1959, new maximum charges were provided by amendments to the

⁷The first paragraph of the amendment states: "The rate of interest * * * shall be 7 per cent per annum but it shall be competent for the parties * * * to contract in writing for a rate of interest not exceeding 10 per cent per annum." The second paragraph adds: "No person * * * shall by charging any fee * * * or other compensation receive * * * more than 10 per cent per annum * * *."

Brokers Law In 1960, the Unruh Act (Retail Installment Sales Act) was passed to regulate the sale of all consumer goods and services, excepting automobile sales

2. COMMERCIAL BANKS

Banks are not only excepted from the usury provisions of the California Constitution, but they are also free of legislative regulation in the matter of interest rates except insofar as the Automobile Sales Financing Law and the Unruh Act apply. It has been argued that, inasmuch as the Legislature has not enacted a specific limitation upon such rates, banking institutions are governed by the Usury Law which provides that the parties to a loan contract may agree in writing to any rate of interest which does not exceed 12 percent per annum. However, the California Supreme Court has rejected this argument, stating that until such time as the Legislature exercises its power to regulate such institutions, they are subject to no restrictions on interest rates or charges.⁸

In addition, there is no federal interest rate maximum or miscellaneous charge statutory limit. However, the discounting practices of the Federal Reserve System vitally affect member banks. In regard to mortgage lending, the policies of the Federal Housing Administration and the Veterans Administration have the effect of pegging interest rates; requirements of the Federal National Mortgage Association for acting as a secondary mortgage market can and do affect interest rates.

Prevailing Interest Rates

The first question to arise at the June 24 hearing pertained to prevailing interest rates in representative types of consumer lending.

Mr. E. L. Cumpston told of a survey conducted by the California Bankers Association which covered banks representing 90 percent of the total consumer loan business in California.⁹

"What I have tried to do is to show the highest rate that any bank might charge and the lowest rate that another bank might charge for the same type of loan and then come up with sort of a normal figure * * *. Now, in personal loans, there is a high of \$9 per hundred per annum and a low of \$6 per hundred per annum, but the normal for an average size loan, and in that category an average size would probably be between \$400 and \$500. * * * would be \$8 per hundred per annum."

In discussing rates for other types of loans, Mr. Cumpston stated: "In home improvement loans, the high that was revealed by the survey showed a \$9 per hundred per annum charge, the low was \$6.50 per hundred per annum, with a normal average * * * somewhere around \$7.50 to \$8 per hundred per annum."

⁸ *Canter v. Seaboard Finance Co.*, 33 Cal. 2d 564, 582.

⁹ Mr. Cumpston, an officer of the Crocker-Angelo National Bank, told the committee that the survey had been conducted on a confidential basis and that he was, therefore, not at liberty to divulge information relative to specific banks. He and Mr. J. O. Elmer of Wells Fargo-American Trust Co. made the principal presentation on behalf of the California Bankers Association. It is important to note, however, that at various points in the course of the hearing these and other witnesses would speak of banks generally, on the one hand, and their own institutions specifically on the other.

On automobile loans, Mr. Cumpston pointed out that there were different rates for loans on new and used cars. He said there was quite a variation on direct loans to buyers of new cars. "[We found] a high of \$9 per hundred and a low of \$5 per hundred per annum, with a normal rate * * * of approximately \$6 per hundred per annum."

On used cars, he estimated the range at "from \$9 per hundred per annum to a low of \$6 per hundred, with a normal running approximately \$7 per hundred."

In personal loans, Mr. Cumpston informed the committee that he found a high of \$9 per hundred per annum and a low of \$6, with the average charge \$8. He added that the average size loan "would probably be between \$400 and \$500 * * *."

True Annual Interest

In response to a question from Assemblyman Cameron, Mr. Elmer explained the reason for use of the expression "dollars per hundred per annum." "I [might point out that] the term of 'interest rate' is not one that is commonly applied in the field of consumer credit—at least [by] such lenders as commercial banks. We express the charge that is concerned in this manner in terms of dollars per hundred per annum."

Assemblyman Cameron then undertook the following line of questioning:

ASSEMBLYMAN CAMERON I'd like to get [this] square, at least in my own mind. On these loans that you're talking about now—[the \$500 personal loans]—you must be talking about installment * * * loans.

MR. CUMPSTON Yes.

ASSEMBLYMAN CAMERON And when you figure per hundred per annum, you figure the number of dollars that were out, total day-wise, and then divide this by 365 to get hundred per annum. Do you?

MR. CUMPSTON No, at the time the loan is made—if the loan were for \$500 and if the rate were to be \$8 per hundred per annum—the charge for one year then would be \$8 for each \$100 borrowed, or \$40 on that loan for one year. The \$40 is added to the \$500 that the customer borrowed, making a gross debt to the lender of \$540, which would be divided by twelve for the monthly payment.

ASSEMBLYMAN CAMERON * * * You're talking about a discounted loan here, actually, [with the charge] tacked on the top, so you have an effective \$250 borrowing instead of * * * \$500. So, roughly, we can double the figures that you gave us per hundred per annum to come up to a *true interest*, is that right? A little less than double?

MR. CUMPSTON. It would be a little less than double for a true yield on the dollars per hundred per annum that's added on. That's correct.

The difference between "true annual interest" and "dollars per hundred per annum" gave rise to some confusion throughout the hearing. In the course of questioning Mr. William H. Pratt of the First Western Bank, Assemblyman Cameron took occasion to remark, "Don't you think possibly * * * that 'dollars per hundred per annum' is not particularly meaningful to the average consumer? When you say, 'Our charge is \$7 or \$8,' and then when you frequently interchange, as each of you has done who testified here—'dollars per hundred per annum' with the term 'percent'—that possibly the consumer is visualizing this as being a percentage interest rather than what it actually is?" The

witness replied, "I think that is possibly right, and I think that the term 'percent' is definitely wrong. I think it should be expressed in dollars."

"True annual interest" is generally understood to represent the real cost of borrowing money, whereas "simple interest" or "simple annual interest" are terms which have been traditionally used and represent the figures customarily quoted to consumers.¹⁰ A 6% loan, as expressed in simple interest, really costs a trifle less than 12% if interest and principal due the lender are paid in equal monthly installments.¹¹ This is because the requirement of returning principal month by month gives the borrower use of only half of it, when averaged out, yet he pays interest for the year on the full amount. *A 6 percent loan really costs 6 percent only if the principal is not repaid until the end of the borrowing year.*

A brochure entitled "Credit Costs Money," which undertakes to translate stated rates to true annual interest, has been distributed in California by the State Consumer Counsel, Mrs. Helen Nelson. The brochure does not elaborate the formula used to arrive at "true annual interest."

In the course of the discussion of interest charges, Chairman DeLotto asked Mr. Cumpston whether "when we're talking about this cost, such as \$9 per hundred per annum, are we also lumping in the service charges or any fees that are attached at the beginning of the contract?" The witness replied that they were all included in the interest charge.

The size of a loan was considered a factor in determining the interest charge. Mr. Cumpston said that the charge "decreases in relation to the amount of the loan * * * In other words, the greater the loan, the lower the rate per hundred the charge." He later explained that "with a larger loan to handle, we can afford to handle it at a lesser rate because of the cost of doing business."

Assemblyman Cameron inquired about the method of computing the monthly amount due on a 30 month loan at \$6 per hundred per annum. Mr. Cumpston concurred when he was asked, "You'd take 15 percent times the unpaid balance and put that on the top and [then] divide it into equal monthly payments for 30 months?"

Competition as a Factor in Interest Rates

The influence of competition in determining the interest charge came up during the hearing, both in the general discussion of rates and in the testimony in answer to the Committee's second topic of discussion, "Conditions of the current money market which affect, if not determine, the cost of consumer credit."

Mr. Elmer stated early in the hearing that "The most important factor in the fixing of the actual rate * * * is competition * * * On

¹⁰ The proposal of U. S. Senator Paul H. Douglas (S. 2755) for enactment of a law which would require lenders to furnish borrowers a 'clear statement' of total finance charges and an expression, in 'simple annual interest' of the actual cost of loans received more than casual attention by this committee. The proposal was considered during lengthy hearings held by the Senate Banking and Currency Committee. It is noteworthy that both Federal Reserve Board Chairman William McChesney Martin and Federal Trade Commission Chairman Earl Kintner have endorsed the disclosure principle. It is anticipated that Senator Douglas will re-introduce his bill in the 87th Congress.

¹¹ It would be a "trifle less" because, as a rule, the borrower does have the full use of the loan amount for the month preceding the first installment payment.

the loans that we make directly, the rates that are set by banks are based on two principal factors. One of them is competition, and the other is our basic cost of operation."

Mr. Cumpston agreed with this position and commented that "each bank sets its own policy. When someone comes in to borrow, he is told how much it costs. If they say that they think they can do better elsewhere, then they have the opportunity to go elsewhere and try."

Nevertheless, twice during the hearing, once by Mr. Cumpston and once by Mr. Pratt, it was stated that interest charges are set State-wide. Mr. Cumpston related, "In the case of our own bank, we set one policy for the whole system. On a certain type loan, we have the same rate in all areas."

Assemblyman Levering asked whether the interest rates quoted during the hearing were subject to "fluctuation upward and downward in accordance with the general cost of the money market." Mr. Cumpston replied, "The cost of money to the commercial type borrower or the prime rate or any of the other indexes of that type that you might use do not affect the rates that are charged on consumer type loans to any great degree." This led into a discussion of the second topic of inquiry ("Conditions of the current money market which affect, if not determine, the cost of consumer credit.") Mr. Elmer agreed with Mr. Cumpston's remarks and stated that "the basic cost of consumer credit is much more closely related to the paperwork * * * and the labor that is represented by paperwork than the actual cost of money."

Federal Controls

The third topic considered was the "Nature, degree and stringency of regulations imposed by the Federal Reserve Board as to volume of consumer lending, interest rates, amount of down payment required, choice of credit risks, etc." Mr. Elmer pointed out that there have been no regulations on consumer credit imposed by the Federal Reserve Board since the end of Regulation W on May 7, 1952. "However," he added, "all commercial banks are subject to very careful scrutiny and examination by the State and Federal examining authorities, and when they examine a bank loan portfolio, they consider very carefully such factors as the total volume of consumer credit business done related to the bank's total resources and its capital. They examine and criticize our credit policy in the selection and approval of loans and in the selection and approval of dealers. They examine our amount of delinquencies, our provisions for charging off bad debts, and our methods of recovery and collection of defaulted items. Now, whenever we encounter variations * * * from practices that they consider to be normal and sound, we can be sure that the bank that is being examined hears of that very promptly, it becomes a matter of the report that is made to the board of directors of that bank, and is subject to reply by the board to satisfy the examining authorities that the necessary changes have been made. Other than that, there are no direct regulations by Federal authority of consumer credit."

Bank Relations with Merchants

The fourth topic related to the "Requirements to be met by retailers, auto dealers and others as conditions precedent to discounting their

paper " The role of a bank as a discounter of loans was touched upon by Mr. Elmer earlier when he stated that banks function in a dual capacity as regards consumer credit "In the first capacity, we function as direct lenders * * * We also function as the discounter of purchase obligations which are originated by retailers Now, the significant part of this distinction is that retailers, who are generally small businessmen, originate from two-thirds to three-fourths of the business which is carried on by banks " Commenting upon the requirements to be met by the retailers before Wells Fargo-American Trust would accept paper, Mr. Elmer said, "Our requirements would be that the dealer obviously appear, as far as our investigation can establish, to be honest and reliable. Secondly, we expect that he should have a good knowledge and understanding of the business that he is in [so] he can perform the proper services to his customers *Thirdly, we want to be assured that he is not or has not been engaged in any unethical or illegal selling practices* " ¹² Fourth, we want to be sure that he has sufficient moral and financial stability to make good on the warranties to the bank as to the conditions of the contracts or the notes that he sells to the bank "

The Committee Investigator wondered whether, in regard to Mr. Elmer's first criterion, the witness meant that the dealer be "honest and reliable" with the bank alone or with the public generally Mr. Elmer answered, " * * * We would expect that he be honest and reliable in his dealings with the public Now, we're not policemen, and we cannot spend our time investigating that, but whenever * * * we encounter any examples where we believe the dealer has consistently violated any such standards of honesty and ethics * * * we don't hesitate to discontinue our arrangement "

On the occasion of his appearance before the Committee, Mr. A. F. Wagele, a vice president of Bank of America, was questioned about his bank's relations with unethical dealers " * * * We work very hard," he pointed out, "at alerting our lending officers to the danger of financing a shady operation and we know that this is not only costly to us in the form of dollar losses, but is a real public relations problem for us, it hurts us in more ways than [monetarily alone] " Mr. Wagele assured the Committee that one of the chief tools used in restraining financing of questionable sales methods is to closely watch the dealer's advertising

Testimony was then given on the same subject by Deputy Attorney General Miles Rubin who informed the Committee that he has been specializing in consumer frauds, "In the duties that we have undertaken in the consumer fraud field, we * * * have received numerous complaints from individuals who felt that they've been pressed by various sales techniques involving items of considerable sums to these individuals—several hundred dollars to several thousands of dollars These items, of necessity, must be financed, and our concern is with the responsibilities of the financial institutions * * * in assuming that the people from whom they buy paper are reputable and are conducting their business ethics on a high level "

¹² Emphasis added

Mr. Rubin then explained various questionable, if not illegal, methods of sales techniques, including referral sales,¹³ and went on to say, "It has been our experience that the financial institutions have eliminated types of paper when public agencies have called to their attention facts surrounding the transaction. However, all the complaints that have come to the public agencies generally have been previously furnished to the financial institutions. It's just when the pressure of public agencies or newspaper pressure is brought to bear that they stop handling this type of paper." Mr. Rubin then stated that these transactions were definitely the exception to the rule, but "the amounts involved are such as to concern us, and I think should concern the committee."

Deficiency Judgments

On the fifth topic of the inquiry ("Nature of the risks undertaken by lenders and the concomitant contractual guarantees insisted upon to secure loans"), Mr. Elmer commented, "The risks * * * range very widely from the signature type of loan on which there is no security whatever and the risk is 100 percent to those that may be fully secured by some form of negotiable securities. In between that, most security is in the form of personal property which may be automobiles, refrigerators, any other thing of that kind, that are covered by conditional sales contracts. Except for automobiles, which have an established market value that can be fairly accurately determined * * *, personal property is very seldom full security for the credit involved. Now, [co-signers] * * * are [required] where the borrower has no established credit record or where he has insufficient job or residence continuity to make the bank feel that the applicant is assured of paying the obligation. I should say, however, that guaranties are taken in only a very small percentage of the cases and only where we think that the borrower has probably the capacity to pay but we have not been able to be assured of his credit background."

As to the rationale for the deficiency judgment, Mr. Elmer stated, "We regard a consumer credit loan as a promise to pay a sum of money. To be of value in banking and commerce as an instrument that can be dealt with, discounted and used in financing, there must be the reasonable expectancy that this promise to pay will be kept or that there will be adequate legal means for enforcing the debt." Mr. Elmer observed that personal property tends to depreciate rapidly "especially in the hands of irresponsible or dishonest * * * buyers." He argued in favor of the deficiency judgment as a penalty for carelessness "Without the deterrent effect of the deficiency judgment, the ratio of default and the percentage of credit losses would go up."

Mr. Elmer maintained that the number of such suits filed by banks is a very small fraction of the loans that they make. Even then, he asserted, they are filed only when there is a "reasonable expectancy of collection."

¹³ In his report to the Governor, dated June 24, 1960, Corporations Commissioner John G. Sobieski alluded to referral sales, characterizing them as being one type of "fraudulent sales promotions." "I have taken the position, administratively," the commissioner reported, "that the purchase of paper from a concern which engages in the fraudulent sales methods is an 'unsafe practice' within the meaning of the Financial Code and, therefore, that I have authority to direct that the discounting of such paper be discontinued."

Assemblyman O'Connell inquired about incentives, on the part of the bank or the dealer, to keep the deficiency down to a minimum. Mr. Elmer's response was to the effect that the incentive lay in the very uncollectability of most deficiency judgments.

ASSEMBLYMAN O'CONNELL * * * I think that what it boils down to is that where it appears that a deficiency would not be collectible in any case, then the obvious thing for the lender or dealer to do is to get the maximum possible amount of money out of the sale made subject to repossession.

MR. ELMER I think it could certainly be said that, in the case of the legitimate retailer, * * * nobody wins when he has to go into a deficiency judgment—and that's generally true in the case of a legitimate lender as well * * *.

* * * ASSEMBLYMAN O'CONNELL Well, now, let's take those cases where it appears that there is a good chance to collect. What is to prevent a collusive arrangement whereby the vehicle is sold at a price which is somewhat less than it is reasonably expected to be sold for?

MR. ELMER: * * * My belief is that the deficiency judgment can only be obtained in court and that the figure allowed by the court would take the cost, the conditions under which the repossessed [property] has been sold, and so on, into consideration * * *.

ASSEMBLYMAN O'CONNELL Except that about 90 percent of the deficiency judgments are obtained by default.

Mr. Pratt of the First Western Bank indicated agreement with Mr. Elmer's position regarding deficiency judgments, but he conceded, upon questioning, that he knew of no studies which establish that most borrowers are aware of the deficiency judgment clause in sales contracts at the time of signing.

Bank Credit Plans

Mr. D. Z. Albright of the Security First National Bank was called upon to describe its revolving credit plan. He summarized that, "An individual establishes his credit with us for a certain maximum number of dollars * * *. The credit he uses at his own election by merely drawing checks * * * and [those checks] come in * * * and create the debt; and the carrying charge here is on a basis of simple interest. He is billed * * * once a month * * * [The] carrying charge, in the case of my own organization, is at the rate of $1\frac{1}{4}$ percent per month * * *. This credit does not apply in its entirety or in its general usage to all individuals who are seeking consumer credit because they must meet a somewhat different set of requirements * * *." Mr. Albright further pointed out that a borrower, under this plan, must have a "splendid credit record." He also stated that the charge is a uniform one, and a minimum of 10 percent of the amount outstanding must be paid monthly.

Another type of financing discussed was the "Bankamericard." Speaking for his institution, Mr. Wagele explained that the Bank of America Charge Account Plan represents extension of credit to those to whom it has issued its own credit card—"Bankamericard". The card holder may use this form of bank credit to purchase merchandise and services from merchants, professional persons, and other members of the bank's plan. The card holder can use his bank credit to purchase at one time up to \$25 or \$100 worth of services or merchandise—

depending on the class of Bankamericard the bank determines he should have

The card holder purchases by presenting his Bankamericard to a merchant member of the plan. The merchant pays an "entrance fee" of \$25.

The Bankamericard and a sales draft evidencing the transaction and obligation to the bank of the card holder are run through an imprinter. The card holder then signs and acknowledges his obligation to the bank. The sales draft is payable to the bank by its terms. The merchant deposits the sales draft to his account at his branch of Bank of America and receives depository credit for the face amount of the draft, less 6 percent. Based on volume and average size of transaction, the cost to the dealer may be reduced to as low as 1½ percent. This is accomplished by quarterly refunds to the dealer.

Bank of America processes sales drafts and bills the card holder monthly. The billing in effect is a demand for payment of the drafts theretofore accepted 25 days after the date of the billing. It contains an option to the card holder to pay the accumulated total of the drafts he has accepted and agreed to pay to the bank on the extended payment plan. There is no charge to the Bankamericard holder if total payment is made 25 days after billing. The card holder may elect to use the extended payment plan, paying a specified minimum payment or more, as he chooses, plus, with the subsequent payments, 1½ percent of the outstanding balances.

There is no charge to a Bankamericard holder to obtain a Bankamericard or to purchase thereunder—his only cost is if he chooses the extended payment plan.

3 PERSONAL PROPERTY BROKERS

Personal property brokers are regulated in California by the Personal Property Brokers Law, which comprises Division 9 of the Financial Code. This law relates solely to loans of money which are secured either by a contract involving the forfeiture of rights in or to personal property, the use and possession of which is retained by someone other than the lender, "or by a lien on wages, salary, earnings, income or commissions."¹⁴

Certain lenders are exempt from this law (e.g., banks, trust companies, credit unions, licensed pawnbrokers,¹⁵ certain cooperative associations and other corporations engaged in making loans relating to agricultural enterprises,¹⁶ and insurance companies admitted to do business in California).¹⁷ Further, the Personal Property Brokers Law is limited to those who are "engaged in the business of lending money" and therefore the Attorney General has ruled in certain cases that where the making of loans was merely an incident to another business, (such as college loans to needy students or labor union welfare loans to members), no license under the Personal Property Brokers Law was required. Certain transactions, although actually loans, are also

¹⁴ Financial Code, Sec. 22009.

¹⁵ Financial Code, Sec. 22050.

¹⁶ Financial Code, Sec. 22151.

¹⁷ Insurance Code, Sec. 1160.1.

exempt. *Conditional sales contracts are not loans*¹⁸ and are specifically exempted by Section 22052 of the Financial Code.

"Charges" permitted by the Personal Property Brokers Law are defined to include not only interest or compensation for the use of money, but also all expenses and costs of investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting and enforcing a loan, or of any service rendered, charged or received by a lender, broker or "any other person".¹⁹ *Thus, the Legislature has limited not only the interest which may be charged, but other costs to the borrower which relate to the loan*²⁰

The maximum rate of charge which a licensed personal property broker may contract for is $2\frac{3}{4}$ percent per month on the portion of the unpaid principal balance which does not exceed \$200, 2 percent per month on the balance in excess of \$200 (but not in excess of \$500) and $\frac{1}{2}$ of 1 percent on the balance in excess of \$500.²¹ If any property securing a loan by a personal property broker is insured in his favor against loss, then modification in the interest rates must be made.²²

In the case of loans of \$5,000 and over, the provisions of the limiting charges do not apply.²³ As a licensed personal property broker is exempted from the Constitutional usury provisions, there is no limit of any kind to the charges that such a lender may exact from a borrower where the amount of the loan is \$5,000 or more and of a type set forth in Section 22009 of the Financial Code.²⁴

At the January hearing, Mr. George D. Nickel, President of the California Loan and Finance Association, spoke on behalf of his organization which is the trade association of the licensees under the Personal Property Brokers Law.

Under California law, personal property brokers are not permitted to make unsecured loans. The California Small Loan Act covers those loans. Mr. Nickel explained why personal property brokers do not obtain small loan licenses: " * * * They, in effect, make unsecured loans when they make loans on the security of wage assignments and, in fact, they make those ' * * ' on household goods, too, because [it rarely happens that household goods are repossessed] "

Mr. Nickel said the chattel mortgage on the household goods or the wage assignment is made primarily for psychological purposes, and that repossession generally happens only when the security is abandoned or the broker is requested to repossess. He explained that "We make our loans primarily on the basis of the [family's ability] to repay, not on the basis of the value of the security—except where motor vehicles are concerned."

Describing the typical loan, Mr. Nickel said the average amount borrowed was \$475, and the usual length is about 18 months. He also commented that in 1958 "personal property brokers made just about a million loans."

¹⁸ *Vesbeck v. Clymer*, 303 Cal. 557.

¹⁹ Financial Code, Sections 22003 and 22004.

²⁰ Specific exceptions are found in the Financial Code: statutory fees paid to a public officer for acknowledging, recording or releasing an instrument securing a loan or executed in connection with the loan (Sec. 22472), premiums for insurance on property securing a loan (Sec. 22006 and 22453), and charges for providing credit life insurance (Sec. 22453.1).

²¹ Financial Code, Sec. 22451.

²² Financial Code, Sec. 22452.

²³ Financial Code, Sec. 22053.

²⁴ *Budget Finance Plan v. Gawson*, 34 Cal. 2d 25.

Mr Nickel called the California rate schedule "one of the lowest in the United States" Chairman DeLotto asked whether the companies always lend at the maximum allowable rates. Mr. Nickel answered, "Yes, [while] some companies, up until two years ago, were charging less than the maximum, * * * the costs of operation have increased, [and] we have been forced to go up to the maximum [while] rates have remained steady"

Mr Nickel commented that the 1959 legislation allowing optional precomputation of interest has proved economical for the personal property brokers and added that, "Now many companies have shied away from precomputation because they believe it's too complicated for their operations But one thing precomputation does do * * * [is that] it informs the borrower at the time the loan is made exactly what the loan will cost him in dollars and cents, * * * because you compute the full charges at [that time] and add them to the face amount of the note so he gets whatever the amount of the note is, plus the charges, and he sees those charges in one lump sum"

Discussing the personal property broker's source of money, Mr. Nickel said the cost of borrowed funds is "vital" to his industry, "because next to salaries, and right along with * * * bad debts, it's the major cost of our operation * * *" He then related that "the only source from which we are excluded is * * * depositors" "Contrary to what many people believe," he added, "no [company] in the personal property brokers' field, small * * * or large, can operate successfully using its own money or its own invested capital. Any company in the personal property brokers' field, to show a net profit, must rely on the leverage that comes from borrowing to broaden the earning base A large chain company, such as the company I represent, [Beneficial Finance] * * * or Pacific Finance, will yield about 70 percent borrowings for about 30 percent capital stock surplus. * * * Now, just about all companies use bank borrowings Small companies * * * will borrow money from banks at a cost of between 6 to 10 percent earned per annum, simple interest, with a range * * * upward, around 7, 8 and 9 percent A large company, * * * such as Household Finance, * * * at this time, strangely enough, will borrow money at a cost not too far below the cost of a small company, which is a change which has come within the last two years"

Mr Nickel said that common and preferred stock are the only other sources of money He estimated that the cost was about 6 percent for a large company and 7 or 8 percent for a small company.

Mr Nickel described the typical borrower as being, for the most part, younger married couples representing primarily the skilled and semiskilled workers He added that the loans from the personal property brokers were generally for "smaller amounts than the loans extended by other credit granters and they are generally extended to customers who have less well-established credit than some of our competitors"

He referred to the idea of people comparing credit costs, "The average person who comes * * * says, 'We can pay so much per

* Mr Nickel defined a "small company" as being one with outstanding loans of about \$250,000

month'—what can you do with that?" He thereupon concluded that failure to "shop" for credit was entirely the fault of the buyer.

4. INDUSTRIAL LOAN COMPANIES

Under the Industrial Loan Law,²⁶ industrial loan companies are corporations which engage in the loaning of money. They are authorized to loan money, secured or unsecured, and to collect and receive charges for loans in advance or otherwise. They are subject to the provisions and regulations of the Corporate Securities Law of the Corporation Code and the Industrial Loan Law of the Financial Code.

The interest rates imposable by industrial loan companies are set forth in the Financial Code.²⁷ Industrial loan companies are exempt from the usury provisions of the California Constitution. The Legislature, however, has limited charges on loans made by such companies. The term "charges" is defined to include the aggregate of interest, fees, bonuses, commissions, brokerage discounts, expenses and other forms of costs charged or received by any person in connection with the loan.²⁸ This definition is substantially the same as that of "charges" in the Personal Property Brokers Law.²⁹

Charges of an industrial loan company may not exceed 2½ percent per month on the portion of the unpaid principal balance which does not exceed \$100, 2 percent per month on the portion in excess of \$100 (but not in excess of \$300) and five-sixths of 1 percent per month on the portion in excess of \$300.³⁰ However, if in connection with a loan, credit insurance is taken in favor of the industrial loan company then the interest rates imposable are reduced.³¹

The provisions of the code regulating the maximum rates of industrial loan companies do not apply to loans of \$10,000 and over. *Therefore, there is no limitation of any kind on the amount of interest or charges an industrial loan company can collect from those who borrow \$10,000 or more.*

In the case of delinquent principal balances in excess of \$300, an industrial loan company may collect court costs and reasonable attorneys' fees allowed by a court in a judgment, or, where no judgment at law is sought, collect bona fide expenses incurred and paid not exceeding 10 percent of the unpaid principal balance.³²

Where interest and charges deducted in advance are in excess of the permitted maximum by reason of any prepayment of the loan or of an installment, a refund must be made.³³ An industrial loan company is permitted to collect from the borrower, in addition to the charges permitted, the statutory fees paid to a public officer for acknowledging, recording or releasing an instrument securing a loan, and insurance premiums for insurance on tangible, real and personal property offered as security for the loan.³⁴

²⁶ Division 7 of the Financial Code

²⁷ Financial Code, Sec. 18000 et seq.

²⁸ Financial Code, Sec. 18651.

²⁹ Financial Code, Sec. 22004.

³⁰ Financial Code, Sec. 18655.

³¹ Financial Code, Sec. 18656.

³² Financial Code, Sec. 18662.

³³ Financial Code, Sec. 18667.

³⁴ Financial Code, Sec. 18660 and 18661.

Mr. Robert B. Donohue, speaking for the California Association of Industrial Loan Companies, testified at the January hearing. In discussing the report of the previous year by the Corporations Commissioner on industrial loan companies, he stated that the outstanding assets of all the companies amounted to \$139,298,402 and that there were about twenty-one companies (with about 165 offices) in the state. He added that "they had an operating expense of \$14,426,841, which was an increase of \$1,313,614 over 1957, the previous year. They paid interest on their certificates of * * * 25.82 percent in gross income, so that, out of the gross total income of \$22,184,282, they have total expenses of \$21,897,010 or a net profit of \$287,272, or 1.16 percent of the total income."

Assemblyman Rees observed that industrial loan companies have a wide scope of lending as they may lend "every place a personal property broker can lend, and can also lend in many of the areas that banks can lend in terms of the collateral used."

Assemblyman Rees asked about the kind of trade an industrial loan company has. "There was a time when the banks got the 'cream', * * *" Mr. Donohue replied, "but now it's just pretty much an open competition. The banks will take borrowers nowadays that formerly they wouldn't, and I don't think it's designated into special groups. *I think the people have become more alert to what they can do in bargaining for terms and they go where they can get the best deal.*"³⁵

Chairman DeLozzo then asked about the cost of money to the industrial loan company. Mr. Donohue stated: "It runs 4 to 5 percent, some companies are paying four on a certain type of certificate and four-and-a-half on other certificates which are in units of larger amounts; and some companies are paying five on all certificates. There again, the economic considerations come in. In some communities they have the competition where they have to pay more to get their money." He added that there are other costs involved in making the loan and that at least 90 percent of the companies are charging the maximum rates allowed by law.

5. CREDIT UNIONS

Credit unions, as defined in the Financial Code, are "cooperative corporations organized for the purposes of promoting thrift among their members and creating sources of credit for them for provident purposes."³⁶ They are organized under two laws: the Federal Credit Union Act and the California Credit Union Law (Division 5 of the Financial Code). A credit union, therefore, may be state-chartered or federally-chartered at its own option. Further discussion here will assume a state-chartered credit union.

Credit unions are authorized to make loans to its members upon such terms and conditions as provided by its by-laws and credit committees.³⁷ Charges (including interest) which a credit union may assess are limited to 1 percent per month simple interest on a declining balance basis. The cost of insurance and any costs of acknowledgment, certification, etc., are not considered charges incident to the making of a loan.³⁸ In

³⁵ Emphasis added.

³⁶ Financial Code, Sec. 14000.

³⁷ Financial Code, Sec. 14802.

³⁸ Financial Code, Sec. 14901.

the case of delinquent loans, a charge of 1 percent per month on the amount which is past due is permitted ³⁹

The limit on charges applies to loans, regardless of size, although no credit union may make a loan in excess of \$3,000 or 10 percent of its unimpaired capital (whichever is greater) with an overall limitation of \$10,000 to one borrower ⁴⁰

The committee heard from Mr. Clarence Murphy, spokesman for the California Credit Union League, at the January hearing. He stated that at the end of 1959 there were 1,684 credit unions operating in California, serving about 1,292,000 members. State-chartered credit unions numbered 640 while 1,044 operated under Federal law. He estimated that, at the end of 1959, all the credit unions in California had assets of \$609,000,000, that the savings of members totaled \$540,000,000, and that there were 634,000 borrowers. Mr. Murphy pointed out that only members of a credit union may borrow from it, and that to form a credit union there must be a *bona fide* community interest based on membership, residence, and employment. On the point of membership, Assemblyman Rees suggested the possibility of a rule preventing a credit union from taking money out of a member's last paycheck to repay a loan when the employee has lost his job. Mr. Murphy stated that this is a practice which is discouraged, but that the presence or absence of an acceleration clause is a policy decision of the board of directors of the individual credit union.

Discussing the maximum rates imposable by a credit union, Mr. Murphy commented that there is little difference between a State-chartered or Federally-chartered credit union. Regarding the amount charged, he said: "Many of the credit unions charge a lesser rate. They may not charge more than this 1 percent per month which is 12 percent simple interest, but they may charge a lesser rate if fixed by policy by the board of directors. For example, * * * we charge, on new automobile secured loans, * * * three-quarters of 1 percent on the unpaid balance, or 9 percent simple interest. On loans that are wholly secured by the savings of the member, very often the interest rate is even less than that. Some credit unions will charge one-half of 1 percent of the unpaid balance and others will charge as much as 6/10 of 1 percent, [or] 7/2 percent simple interest."

Dealing with the cost of money to the credit union, Mr. Murphy stated that the average dividend paid by a credit union is slightly over 4 percent per annum, and that there are a number of credit unions using borrowed money in excess of the savings of the members. He added, "A credit union may borrow up to 50 percent of its paid-in and unimpaired capital, and service. They seldom do. At all times, there are a number of credit unions using borrowed money and for the use of that money, they pay anywhere from 4 percent to 6½ percent. They have found it difficult to establish a line of credit, in many instances at recognized commercial institutions; therefore, they resort to a very large degree of borrowing from one another."⁴¹

Discussing the costs of the credit union, Mr. Murphy reported that the recent increase of the minimum franchise tax from \$25 to \$100

³⁹ Financial Code, Sec. 14852

⁴⁰ Financial Code, Sec. 14804

⁴¹ Emphasis added

has caused a great decline in the number of new credit unions to be chartered under the California Credit Union Law. Assemblyman Reagan stated that the reason for the rates of credit unions being low was that outside of the franchise tax, they pay none of the taxes that their competitors do. "That is possibly a minor factor * * *," Mr. Murphy replied, "because in analyzing the income of credit unions (and recognizing that the dividends they pay are the same as the interest paid on savings accounts in commercial banks), * * * if that were exempted as an expense, * * * the tax burden on the credit union would be very little."

Assemblyman Rees wondered whether a consumer who belonged to a credit union and needed a consumer loan would go there first for it. "I would say that they should," Mr. Murphy replied, "but they don't always do so. I think that was pointed out in the earlier testimony where the [buyers] are so anxious to get their hands on the product, that they will sign anything to [obtain] it, and consequently, they pay considerably more * * *."

6. PAWNBROKERS

Pawnbrokers are regulated by Division 8 of the Financial Code. The loan charge limitations applicable to pawnbrokers were amended in 1950 and now permit the following: 2½ percent per month of the portion of the unpaid balance which does not exceed \$100, 2 percent per month on the balance in excess of \$100 (but not in excess of \$500), and five-sixth of 1 percent on the balance in excess of \$500. The Code also provides that a minimum charge of 75 cents per month may be imposed on loans of less than \$10, and a minimum charge of \$1 per month may be imposed on any loan of \$10 or more.

Mr. John Gilchrist gave testimony at the January hearing on behalf of the California Collateral Loan Association. He declared that prior to enactment of the 1950 amendment, California had one of the lowest schedules of rates in the nation. He also testified that "There are approximately 220 * * * pawnbrokers in the State of California, and of that number, we [represent] * * * 190 to 195. The average loan throughout the State of California is \$8.75. The average holding period for those loans is approximately 60 days. Approximately 85 percent of the total number of loans are redeemed at the end of the sixty day period, and 90 to 92 percent of all the loans are redeemed by the end of the six month redemption period."

Mr. Gilchrist estimated the pawnbroker's cost in making a loan at 48 cents. As to the source of money, he stated that the money is generally personal money, and that only upon occasion do the pawnbrokers borrow from banks. Money borrowed from banks is not secured by the pawnbroker's type of loan.

The typical borrower from the pawnbroker was described as "the classification of people who cannot obtain loans from any other type of lending agency, with the possible exception of the credit union * * *". Due to the low average amount of the loan, very few of the lending institutions will go down that low * * *. The type of people we get are those who are new * * * to the community * * *; who have no

established credit; or they would be the type of people who would be employed on an hourly basis * * * and would require small sums of money * * * for emergency purposes * * * "But, strange as it may seem," Mr. Gilchrist observed, "that money is rarely ever used for personal pleasure or liquor or anything such as that "

7. SMALL LOAN COMPANIES

The California Small Loan Law⁴² is applicable to persons or organizations who are engaged in the business of making loans in the amount of \$300 or less, without regard to the security.⁴³ In addition to loans of money, loans of credit, goods or things in action are also regulated.⁴⁴ The same lenders that are exempted from the Personal Property Brokers Law are exempted from the California Small Loan Law⁴⁵ plus licensed personal property brokers when transacting business as authorized by the Personal Property Brokers Law.⁴⁶ The opinion of the Attorney General relating to the making of loans which are merely incidental to another business applies to the California Small Loan Law as well as to the Personal Property Brokers Law.

Insofar as exempted transactions are concerned, there is a difference between the Personal Property Brokers Law and the California Small Loan Law. Conditional sales contracts, (which are not loans) are exempted from both laws. Flooring contracts, however, are not exempt from the Small Loan Law. Loans of credit made pursuant to a plan involving the issuance of a credit card for which the charge does not exceed \$10 per year are exempted, provided there is no other charge to the holder of the credit card.⁴⁷

"Charges" are defined in the Small Loan Law⁴⁸ substantially the same as under the Personal Property Brokers Law. However, the lender under the Small Loan Law is not exempt from the constitutional provisions relating to usury. Therefore, in addition to the 10 percent per annum limitation as to interest,⁴⁹ there is a provision limiting the amount of expense charges a lender can make under the Small Loan Law. Such charges are limited to the "actual outlay" of the lender and, when added to interest, may not exceed the aggregate amount of 2½ percent per month on that portion of unpaid principal balance of the loan not in excess of \$100 and 2 percent per month which is in excess of \$100 but not in excess of \$300 as \$300 is the maximum amount allowed. If property securing the loan is insured in favor of the lender, the ceiling on expense charges for actual outlay is, when added to interest, 2 percent per month.

Charges for statutory fees to public officers for acknowledging, filing, recording or releasing instruments executed in connection with

⁴² Financial Code, Div. 10.

⁴³ Deputy Corporations Commissioner John A. Metzler stated to the committee investigator in October 1959 that there were, at that time, only three licensees under this law.

⁴⁴ Financial Code, Sec. 24200.

⁴⁵ Financial Code, Secs. 24050 and 24051.

⁴⁶ Financial Code, Sec. 24053.

⁴⁷ Financial Code, Sec. 24051.1.

⁴⁸ Financial Code, Secs. 24003 and 24004.

⁴⁹ Financial Code, Sec. 24451.

the loan are permitted⁵⁰ as are charges for insurance on tangible personal property securing the loan.⁵¹

Both the Personal Property Brokers Law and the California Small Loan Law are licensing laws. They are primarily concerned with the protection of borrowers. In the one case the application of the law to a transaction is dependent upon the type of security for the loan. In the other case the size of loan is the determining factor. The Industrial Loan Law and the California Credit Union Law differ in that they relate to corporations formed under those laws. The solvency of the lender is a matter of concern under these laws although they also contain regulations aimed at the protection of the borrowers. However, their application is not dependent upon either the size of the loan or the nature of the security taken.

8. SAVINGS AND LOAN ASSOCIATIONS

A savings and loan association may be defined in theoretical terms as an organization of people entitled to equal privileges, co-operating by established periodic and equal payments per share in the creation of a common fund which may be loaned to any member for the purpose of building on property purchased therewith or on other property on which the association obtains a lien, and sharing the profits and losses of the association according to their respective interests. The statutory definition of a savings and loan association, except federal savings and loan associations, is "Any institution incorporated to conduct, * * * the business of receiving and lending money in accordance with the provisions of Division 2, Part 1, of the Financial Code."⁵²

Savings and loan associations are regulated by Division 2 of the Financial Code, known as the Savings and Loan Association Law. The state agency involved is the Division of Savings and Loan which is headed by the Savings and Loan Commissioner.⁵³

A savings and loan association is not a banking corporation. An association may not carry on its books any demand, commercial, or checking account, or any credit to be withdrawn upon a negotiable check or draft. Nor may it advertise or represent itself to the public as a bank or as a trust company, or do a trust business. Any association whose corporate name does not include the words "building and loan," "building-loan," or "savings and loan" is required to state in all advertisements that "This is a savings and loan association."⁵⁴

Federal savings and loan associations are governed by the Federal Home Loan Bank Board. The Veterans Administration, Federal Housing Administration, and Federal National Mortgage Association are also involved in regulation of federal savings and loan associations. The California statutes applying to federal savings and loan associations duplicate, in most particulars, the statutes applicable to building and loan associations. As to their powers, the code provides that every federal savings and loan association incorporated under the provisions of the Home Owners' Loan Act of 1933, and the holders of shares or

⁵⁰ Financial Code, Sec. 24455

⁵¹ Financial Code, Sec. 24466

⁵² Financial Code, Sec. 5057

⁵³ Financial Code, Sec. 5206

⁵⁴ Financial Code, Sec. 5013

share accounts issued by any such association have all the rights, powers, and privileges and are entitled to the same exemptions and immunities, as are granted to savings and loan associations organized under the laws of this State, and to the holders of investment certificates, membership shares, or guarantee stock of domestic associations⁵⁵

Interest rates imposable by savings and loan associations are not regulated under California law, for the same reason discussed above in relation to commercial banks. However, the federal interest rate maximum is 8 percent per annum. In addition to this 8 percent figure, "points" are often charged on mortgages.

Mr Franklin Hardinge represented the California Savings and Loan League at the Sacramento hearing. Committee members were furnished an elaborate analysis of the national money market for the years 1950 through 1959, with the figures for the concluding year representing a projection

"* * * To the extent that these statistics are available,"⁵⁶ Mr. Hardinge told the committee, "this is a pretty good picture as to the funds which have been saved by individuals and corporations over the years, showing the movement in * * * the last eight⁵⁷ years and to give you some idea as to what happened to cause the increase in interest rates * * *"

According to the Savings and Loan League's figures, the supply of money for lending has increased by approximately \$130,000,000,000 in the period 1950-1958, "and in 1959 it will go up another \$26,000,000,000." Mr Hardinge added. He drew attention to the fact that, in 1951, the aggregate of money available for lending was roughly \$52,562,000,000 while the total corporate borrowings, governmental loans and consumer credit was \$52,301,000,000—"a fairly good balance; therefore, your money market certainly was not 'tight'."

Turning to the figures for 1955, however, the witness noted that an imbalance occurred, with a deficit of some \$13,531,000,000 for that year. The "tight money" condition commenced in that year, but Mr. Hardinge observed that money has not necessarily been scarce "because in 1959 we had \$94,000,000,000 worth of loans made—which contrasts with just \$52,000,000,000 worth of loans * * * in 1951. *Certainly money is not scarce, even though it is somewhat expensive.*"⁵⁸

The allusion to the Federal Government's money policy prompted Assemblyman Rees to ask what effect a recent 5 percent valuation on short term government debentures had produced on savings and loans who have been paying 4½ percent for their money.

MR. HARDINGE. * * * It has unquestionably been a factor in the recent increase [in interest rates on deposits] from 4 to 4½ percent * * * The banks and the savings and loan associations in the East felt it much more because the money market rates are generally much lower [there] * * *

⁵⁵ Financial Code, Sec. 11690

⁵⁶ Mr. Hardinge cautioned that his data did not represent "a complete picture" of the course of available funds for loans. He pointed out, specifically, that it did not include savings in the stock market or real estate investments.

⁵⁷ Since the data for 1950 related only to supply of money and because of the hypothetical data for 1959, the presentation included full factual breakdowns on only eight years (1951-1958)

⁵⁸ Emphasis added

ASSEMBLYMAN REES: * * * In the past, what has been the relationship of the yield on short-term Government securities and the percentage which you pay for your money?

MR. HARDINGE: Traditionally, it has been lower * * * The [rate at which] the United States Government has been able to borrow money has always been the lowest rate in the country, and all other rates have been based and have been built on top of that * * *

ASSEMBLYMAN REES: So * * * your toughest competition for getting money loaned out for home purchases in California is from the Federal Government—which is now a half percentage above you, [whereas] it has usually been about a half percentage below you?

MR. HARDINGE: I wouldn't say it's a tough source of competition * * * for the simple reason that people who invest in Government bonds usually have large sums of money, whereas our typical customer is a person with more modest means * * * It has its influence, but I wouldn't say [the effect is drastic]. It has more [of an effect] in the East.

Discussing interest rates paid by the borrower, Mr. Hardinge observed that, in the mortgage loan field, interest is charged on the balance of the loan outstanding ("Therefore, the stated interest is, in effect, the actual interest charge") He contrasted this with the customary practice of discounting the interest at the beginning of the term in most instances of consumer loans. " * * * The borrower only has use of half of the funds, so that, as a result, it amounts to the effective interest rate being almost double the stated interest rate "

Mr. Hardinge recited the various charges incident to loans. These costs include title insurance, appraisal and credit reports, "[and], in the field of construction loans, where a great many inspections of property during construction [are] involved, where many pay-outs are made to different material people and subcontractors, there is usually a charge of from 2 to 2½ percent made for a service rendered * * * " In response to a question from Chairman DeLotto, the witness indicated that if the loan were for \$10,000 the amount of the charge would be in the neighborhood of \$200 to \$250.

At this juncture, Mr. Hardinge explained the "point" system used by savings and loan associations "It has been said by some * * * that a point * * * is an extra point of interest. This is not so, because a point would be—if we are talking about a 1 percent [on] this \$10,000 loan—this would be \$100. But this one point is amortized either over the entire length of the loan (if it is a 20-year loan) or, more typically, it is amortized over the average term that loans are on the books (which is about eight years), so that a charge of about one point, on top of all the other charges, actually constitutes about one-eighth of 1 percent of yield to the lender and, therefore, one-eighth of 1 percent cost to the borrower " As a case in point, Mr. Hardinge stated that if a loan is quoted at 6 percent interest and two points, it signifies that the interest has been raised by one-fourth of 1 percent—not two full percentage points or 8 percent.

REPORT OF SOCIAL INSURANCE SECTION

CALIFORNIA UNEMPLOYMENT COMPENSATION DISABILITY FUND

The California Unemployment Compensation Disability Act was enacted into law by the 1946 Special Session of the California State Legislature. The act was designed to compensate, in part, for the wage loss sustained by individuals unemployed because of sickness or injury.

The act and the Disability Insurance Fund established by it are administered by the California State Department of Employment.

The act was adopted in California only after many years of argument between labor unions who generally support the concept of this form of social insurance and insurance companies who say this act is an encroachment on the traditional forms of private insurance underwriting.

As originally introduced into the Legislature, the Unemployment Compensation Disability Act established a state monopoly in the field of disability insurance much like the unemployment insurance system. No private insurance companies would be allowed to write unemployment compensation disability coverage. This, along with the whole concept of unemployment compensation disability, was strongly opposed by the private insurance companies. However, when it became clear the act was gaining widespread support, the insurance companies abandoned their opposition to the act and had introduced into the act an amendment that permitted them to compete with the State Plan in the writing of unemployment compensation disability insurance.

Proponents of a monopolistic plan argued that if private insurers were permitted to compete with the State, they would be free to reject the application of any group desiring coverage which they considered an inferior risk and would accept only superior risks. The State Plan, therefore, would have to carry the less desirable risks to the detriment of the financing position of the Disability Fund.

The Legislature appeared to be impressed with this argument. When it decided against a monopolistic system, it made provision in Sections 3254(h) and 3255(b) of the Unemployment Insurance Code that the Director of Employment shall not approve a voluntary plan or group of plans if such approval would result in a substantial selection of risks adverse to the Disability Fund. The law, however, made no specific provision for determining what "substantial adverse selection" was. This was left to be determined by departmental regulation.

The establishment coverage rule contained in Sections 3254(b) and (f) and 3255(b) and (f) prevents private carriers from selecting the better risks within an employing establishment. The carrier must offer the plan to all the employees in the establishment, present and future, and enroll all the employees when they apply.

Another prerequisite for departmental approval of a voluntary plan, Sections 3254(a) and 3255(a) should be noted. Since some selection of risk was believed to be unavoidable, the private carriers were required to offer more liberal benefits than the State Plan. This is commonly known as the "greater rights" requirement.

1. *The Adverse Selection Regulations*

The 1946 Legislature did not specify a criteria for determining "adverse selection" nor did it give a definition of the term "substantial." Consequently, a departmental regulation was needed to provide specific standards. Representatives of the insurance companies and the department met during 1956 to discuss the problem. There was general agreement that many factors such as sex, age, race, earnings, industry, occupation, pre-employment physical examination, sick leave policies, etc., affected the hazard of wage loss due to nonoccupational disabilities. It was also recognized that criteria for administrative control and the preselection of risks had to be quite simple if they were to be applied easily and without seriously impeding voluntary plan sales activities. Available actuarial data from private insurance experience indicated that the cost of providing disability benefits to a woman employee would be double the cost of providing them to an employed man. So the proportion of women in each group to be covered by a voluntary plan carrier appeared to offer a good standard for measuring adverse selection. Furthermore, the high cost of benefits in some industries, occupations and earnings groups seem to reflect concentrations of women so that the count of women appeared to provide some indirect control over those other factors having a bearing on benefit costs. It was decided that the number of women in the total employment of an establishment electing private coverage taken at the beginning of the contract would give a satisfactory measure of "female content" that would be stable and would require the simplest bookkeeping.

Each carrier's aggregated "female content" would then be evaluated at the time it was proposing to add another group of employees to its coverage to ascertain if adverse selection was occurring.

On the assumption (based on census data for all civilian employees as of March 1940) that women constituted about 25 percent of all workers in covered employment, the minimum required proportion of women employed in all the establishments insured by the private carriers was set at 20 percent. The 20 percent minimum permissible female content was incorporated into Departmental Regulation 3254(h)-1 which remained in effect until the adverse selection rule was suspended by the 1953 Legislature. The 1953 suspension left the adverse selection rule in the law and left the adverse selection regulations in the department's books but made them inoperative from 1953 until the present.

The other rule bearing on adverse selection, the establishment coverage rule, has been fully operative throughout the period that the adverse selection rule was suspended.

It should be noted again that the assumption used in fixing at 20 percent the minimum permissible female content for any one carrier was that the female content of all disability coverage was 25 percent.

The assumption was based on 1940 census data which showed that women represented about one-fourth of all civilian employment. No later data were available except for manufacturing when the regulation was discussed. Conditions differed substantially, however, from the assumption. Women constituted much more than the 25 percent of all wage earners in California covered employment at the time the assumption was made, and the proportion increased slightly over the next few years. For the 1947-1953 period as a whole, the average female content was 32.9 percent. For the six years following the suspension, the female content remained virtually stable at an estimated 33.3 percent.

Before the Suspension

At the start of voluntary plan coverage, the female content of this coverage was much higher than the 20 percent minimum permissible level. During the 1947-1953 period before the suspension of the adverse selection rule, women actually constituted 26.2 percent of the wage earners covered by the voluntary plans and ran as high as 27.5 percent in 1951.

In the early rush to obtain new business, some carriers covered establishments with relatively heavy female employment. Such coverage was often very profitable even with substantial additional benefits in excess of the low statutory benefits in effect at the start of the program. Increases in statutory benefits gradually raised the costs of benefits, but the underwriting remained financially attractive, and voluntary plans share of coverage increased year by year to a peak of 51.6 percent of the covered employment in 1951. In that year, the voluntary plan female content also reached its highest point, 27.5 percent. When benefits increased further in January 1952, some carriers reached the point of diminishing returns. They found it difficult to reduce their female content by adding plans since they had to cover entire establishments rather than selected groups of workers, and most establishments not under private coverage had large numbers of women among their employees. The net result of their efforts to improve their risks and reduce their loss ratios (which was ordinarily done by experience rating plans and adopting the unsatisfactory ones) was a drop in actual female content from 27.5 percent in 1951 to 26.3 percent in 1953.

At the same time, the voluntary plans share of covered employment also dropped from 51.6 percent in 1951 to 50.1 percent in 1953. This was the first indication of the fact, substantiated by the record of later years after the suspension of the adverse selection clause, that private carriers could not reduce the female ratio of their aggregate coverage without also decreasing their total coverage. The establishment coverage rule, of course, was the reason for this.

The female content of the State Plan coverage was substantially higher than the aggregate for the voluntary plans. During 1947-1953, it was 37.5 percent compared with 26.2 percent for the voluntary plans. While the voluntary plan female content decreased somewhat between 1951 and 1953, the State Plan content changed very little, rising from 38.9 percent to 39.3 percent.

In summary, aggregate female content of all voluntary plans was higher than the minimum permissible during the years preceding the suspension. Their actual female content was 26.2 percent for the period, but it was nevertheless considerably lower than the State Plan female content which averaged 37.5 percent.

After the Suspension

Upon the suspension of the adverse selection clause, the female content of voluntary plans, the single measure of adverse selection affected by the suspension, dropped. During the first three years, their actual female content went down from 26.3 percent in 1953 to 23.4 percent in 1956. The average figure for the six-year period following the suspension was 23.4 percent, down by 2.8 percentage points from the average of the period preceding the suspension.

Concurrently, with the moderate decline in voluntary plan female content, the State Plan female content rose and stabilized between 40.3 percent and 40.5 percent during the 1956-1959 period. The average State Plan female content rose to 40.2 percent. Thus, the difference between the State Plan and the voluntary plans with respect to female content, which was 11.3 percentage points on the average before suspension, increased to 16.8 percentage points after suspension.

It was noticeable that, after suspension of the adverse selection clause, the private carriers tried to drop the risks which, when experience rated, turned out to be unsatisfactory and to pick up other risks which they hoped would be profitable. Thus they had done before but always with the limitation that they had to maintain the minimum female content.

Under the establishment coverage rule, however, the private carriers were able to decrease their aggregate female content only at the expense of their aggregate share of coverage. They could drop establishments with a high number of women, but they could not acquire new coverage with sufficiently low female content to improve their overall ratio. Thus, in 1953, a little more than 50 percent of all covered employment was under voluntary plan coverage, and in 1959, only 42 percent. In other words, a drop of 3.5 percentage points in actual female content between 1953 and 1959 was associated with the drop of 8.1 percentage points in the share of coverage. It is quite possible that the average risks covered by private carriers improved more than the small drop in female content would indicate because experience rating and retention of the best coverage gives a more effective selectivity than the use of a single measure such as female content to select which plans will be written initially. These figures suggest two observations. First, to take adverse selection only in the limited terms of the regulation, women are now employed in virtually all types of establishments, and it is extremely difficult for carriers to reduce their female content without reducing total voluntary plan coverage as well so long as the insurers are required to keep the plan open to all employees of an establishment. Secondly, taking adverse selection in a broader sense of the overall results that could be secured through experience rating, it is possible that the private carriers did not reduce their female content substantially after the suspension of the adverse selection clause because the regulation related, and only in a negative way, to

a single factor affecting costs rather than to the net effect of all factors, and thus were only partially effective in controlling selection. Experience rating irrespective of female content may have given private carriers a more effective selection of the better risks than analysis of the female content suggests.

Experience of Some Individual Carriers

Some of the carriers have sought the improvement of their risks through underwriting practices and experience rating much more aggressively than others. This was evident before, as well as after, the suspension. Most companies underwrote selectively and dropped the plan after the statutory minimum length of coverage if they found it unprofitable. The standard insurance industry practice of experience rating policies was reflected in a great deal of turnover in voluntary plans. About 124,000 voluntary plan approvals have been issued by the Department since the inception of the program. Approximately 13,000 of these represent a change from one insurer to another, and another 24,000 resulted from changes of employer. Thus, about 87,000 new voluntary plans have been written. Of these, 33,997 were in effect on September 30, 1959. It is apparent that many of the remaining 53,000 plans represent returns to State Plan coverage as a result of adverse experience.

At the end of August 1959, the average female content of voluntary plans computed as of the date of plan approval was 19.9 percent. Of the 57 insurance carriers writing disability insurance on that date, 16 had a female content that was under 17 percent. These 16 carriers held 21,800 plans out of the 34,128 in effect. Their average female content was about 15 percent computed as of the date of approval of the plans. The largest single carrier, the California Western States Life Insurance Company, had, as of October 1959, 12,002 plans in effect with an aggregate female content of only 15.1 percent.

Comparative Filing Rates and Cost Rates of Women and Men Under the Various Types of Disability Coverage

Table I presents statistics indicating the differences in filing rates and cost rates that exist between men and women.

The filing rates correspond to the number of paid claims filed and terminated per thousand persons eligible under the various types of coverage, eligible persons being workers who have sufficient wage credits to file a claim with the plan that covers them if disabled.

Cost rates refer to costs of benefits per one hundred dollars in taxable wages.

The filing rates and cost rates for the unemployed, the extended liability rates, are separated from the voluntary plan and the State Plan rates as the unemployed represent a distinct type of coverage that is a joint liability of the private carriers and the State Fund. The female/male ratios are the ratios of female filing rates or cost rates to male filing rates or cost rates. They show how much greater are the female filing rates and the cost rates than the corresponding male rates. Thus, a female/male ratio of 2.0 means that the female rate is twice as high as the corresponding male rate.

The figures in Table I indicate clearly that women in covered employment file many more paid claims than men for a given number of

insured lives whether they are covered by voluntary plans or by the State Plan. Their cost rate has been at least twice as high as that of men, not only because of their high filing rate but also because their earnings are lower than men's earnings. During the period 1949-1953, for which the table provides data on cost rates, the female/male ratio for the State Plan fluctuated between 2.21 and 2.63. That for the voluntary plans varied from 2.03 to 2.20. The female cost rate was between 2.3 and 2.4 times the male rate for total coverage. (An exact ratio for all coverage cannot be calculated because of the differences in the benefit structures of State and voluntary plans.) In 1956, however, the State Plan female/male ratio dropped to 2.03, and that for the voluntary plans to 1.87 because the cost rate of men rose faster than the cost rate of women. (It is possible, but not known with certainty, that the trend is continuing at present.)

If we assume the cost rate of women is 2.4 times as large as the cost rate of men, that female content is the only criterion for the control of risk selection, as is assumed in the regulations of the department, and we take into account the coverage proportions given earlier in this report, it is possible to make a few calculations, the results of which indicate the effect of the various trends in State Plan—voluntary plan female coverage described above.

- (a) If during 1947-1953, the State Plan had covered all covered employment, no voluntary plans, its total cost rate would have been 1.46 times the male cost rate.
- (b) Since the average female content of the State Plan was higher than that of covered employment because of voluntary plans, the State Plan total cost rate was actually 1.525 times as high as the male cost rate or 45 percent higher than it would have been under complete coverage.
- (c) After the suspension during 1954-1959, had the State Plan had complete coverage, its cost rate would have been 1.466 times the male cost rate.
- (d) Because of voluntary plans share of coverage, the State Plan cost rate for the period was actually 1.563 times the male rate or 66 percent larger than the cost rate for monopolistic coverage.

Consequently, before the suspension, the State Plan cost rate was 1.045 times as large as the monopolistic cost rate and after the suspension, it was 1.066 times as large. The increase in this ratio, 2.1 percentage points, may be said to represent the net effect in the State Plan cost rate of the additional adverse selection caused by the suspension of the adverse selection clause under the assumptions given. It should be compared with the 4.5 percentage points which represent the net effect of the adverse selection existing before the suspension.

It is further possible to calculate the effect on the voluntary plan cost rate of increasing their actual female content from their 1959 level of 22.8 percent back to the 1953 figure of 26.3 percent. If their female/male ratio were 2.4, the indicated increase in female content above would cause their cost rate to rise by 37 percent if their benefit structures remained unchanged.

TABLE I
**Disability Insurance Filing Rates and Cost Rates by Sex and
 Female/Male Ratios, by Type of Plan**

Part A Filing Rates

Year of claims filing	Voluntary plans			State Plan			Extended liability		
	Men	Women	F/M ratio	Men	Women	F/M ratio	Men	Women	F/M ratio
1950	86.5	130.8	1.51	46.8	93.8	2.00	121.4	126.5	1.04
1951	92.3	145.1	1.57	48.9	96.0	1.96	186.5	137.2	.74
1952	89.6	152.0	1.70	56.2	107.0	1.90	175.8	139.5	.79
1953	94.7	162.2	1.71	69.0	110.1	1.85	194.4	162.3	.83
1954	91.5	150.2	1.64	62.0	111.4	1.80	154.7	156.1	1.01
1955	92.5	146.3	1.58	62.1	119.0	1.93	159.9	153.8	.96
1956	89.3	154.5	1.73	62.7	117.2	1.87	178.2	140.8	.79
1957	95.7	172.4	1.80	66.5	121.2	1.82	160.4	146.0	.91

Part B Cost Rates

Year	Men	Women	F/M ratio	Men	Women	F/M ratio	Men	Women	F/M ratio
1949	49	1.01	2.00	38	.73	2.21	10	20	2.00
1950	58	1.18	2.03	36	.91	2.53	12	23	1.92
1951	59	1.30	2.20	35	.92	2.63	.07	15	2.14
1952	62	1.34	2.16	41	1.02	2.49	.07	14	2.00
1953	60	1.26	2.10	16	1.05	2.28	.08	13	1.63
1956	65	1.21	1.87	60	1.22	2.03	.08	11	1.31

SOURCE: California Department of Employment

2. The "Greater Rights" Requirement 1947-1958

Section 3254 of the Unemployment Insurance Code provides that one of the conditions of approval for a voluntary plan is that it shall offer rights greater than those provided under State Plan coverage. In the terminology that has grown up around the disability program, the additional rights offered by voluntary plans over those provided for under the State Plan have come to be known as "greater rights." An interpretation of the "greater rights" requirement is contained in a departmental memorandum dated March 12, 1946, to various insurance companies which stated:

"To meet this (greater rights) requirement, the proposed voluntary plan must be substantially more beneficial to the employee it seeks to cover than is the State Plan. The employee's rights under a plan may be divided into three main categories:

1. Eligibility for benefits
2. Amount of benefit payments
3. Maximum amount of benefits

"To be approved, the plan must be more favorable to the employee than the State Plan in at least one of three categories and must be at least as favorable in the others. It must not result in the exclusion from benefits of any individual who would be eligible for benefits under the State Plan if the private plan were not in effect."

Of equal importance to the proportions of voluntary plan coverage entitled to greater rights is the amount of additional benefits paid by voluntary plans for greater rights over and above the benefits the State Plan would have paid under the same conditions to the voluntary plan coverage

Extent of Greater Rights of Voluntary Plan Coverage

Table II gives an historical summary of the extent to which some of the most important greater rights were offered by voluntary plans to their coverage

While under voluntary plan contracts, all coverage was entitled to at least one greater right of one type or another on each of the dates shown on the Table. The proportion of coverage entitled to any one greater right varied during the period. The changes that occurred in the proportion of coverage receiving any one greater right tended to be associated with the liberalization of State Plan benefits by the Legislature.

It was to be expected that as State Plan benefits were liberalized by the Legislature, the voluntary plans would find it increasingly difficult to offer more advantageous benefits. So, while in 1950, about 79.1 percent of all voluntary plan eligibles were covered by plans providing a maximum weekly benefit amount higher than that required by the Code, in 1958, only 8 percent of the eligibles were covered by plans affording more than the statutory requirement. In 1950, the most important greater rights offer (in terms of the proportion of eligibles covered) were (a) reduced waiting period for accidents, (b) maximum weekly benefit greater than the statutory requirement, and (c) payment of basic benefits in addition to continued wages.

By 1958, the importance of the greater rights had shifted significantly. The greater rights offered to the largest proportion of coverage were (a) reduced waiting period for accidents which covered 62.1 percent of the eligibles in 1950 and 76.7 percent in 1958, (b) additional days of hospital benefits which covered 33.8 percent of the eligibles in 1958 and 7.2 percent in 1950, and (c) payment of basic benefits in addition to continued wages which covered 90.1 percent of the eligibles in 1950 and 40.5 percent in 1958.

The higher maximum weekly benefit, which is very costly compared with other types of greater rights, was replaced in importance by the relatively inexpensive right to one additional day of hospital benefits while the payment of benefits in addition to continued wages declined substantially in importance.

Additional Benefit Payments for Greater Rights

There are no reported data available as to the amount of additional benefits the voluntary plans were required to pay under the greater rights provision of the Code. It is possible, however, to make estimates of those amounts by the use of statistics collected and reported by the Department for a number of years. These estimates, presented in Table III, are based upon the assumption that, without greater rights, the workers covered by voluntary plans would have had the same filing rates (within each age and sex group) and the same average durations

of illness as those receiving regular State Plan benefits. It was assumed, also, that the average weekly basic benefit of voluntary plan workers would be higher under the State Plan than that of regular State Plan beneficiaries because the average high quarter wages of voluntary plan beneficiaries are higher than those of regular State Plan beneficiaries. It is clear from Table III that whether the period covered is considered as a whole or each year is considered separately, greater rights have represented a substantial advantage to disabled workers covered by voluntary plans. An estimated total of nearly \$70 million was paid out as greater rights during the 1947-1958 period, the equivalent of 18.9 percent of all the reported benefits paid by the voluntary plans. The value of greater rights, however, reached a peak in 1951 and

TABLE II
Percentage of All Voluntary Plan Eligibles^a Who Are Covered By Plans Offering Various Benefits in Excess of Those Applicable to Workers Covered by the State Plan; 1950 Through 1958

Item	June 30, 1950	June 30, 1951	June 30, 1952	June 30, 1953	June 30, 1954	June 30, 1955	Dec 31, 1956	Dec 31, 1957	Dec 31, 1958
A. Shorter Waiting Periods									
1 For Accidents									
0 days	59.8	62.4	67.6	67.7	66.6	66.9	70.4	70.8	71.4
2 days	2.1	1.7	2.2	2.4	3.5	3.7	4.7	4.8	4.8
6 days	0.2	0.1	0.2	0.2	0.2	0.3	0.1	0.2	0.4
Statutory 7 day	37.9	35.8	30.0	29.7	26.7	26.1	24.8	24.2	23.3
2 For Illness									
0 days	1.7	1.6	1.7	1.9	2.2	2.2	1.9	1.9	3.1
2 days	0.1				0.1				
3 days	10.5	9.9	11.3	10.8	10.7	10.1	10.8	10.9	10.1
6 days	0.2	0.2	0.2	0.2					0.1
Statutory 7 day	87.5	88.3	86.8	87.1	87.0	87.7	87.3	87.2	86.6
B. Maximum Weekly Benefit Amount									
\$100 to \$4.90 greater	16.0	15.7	17.4	17.3	0.8	6.4	6.5	6.4	2.7
\$5.00 to \$9.99 greater			9.3	11.7	14.7	14.8	0.7	0.7	1.3
\$5.00 to \$14.99 greater	45.1	46.3							
Over \$10.00 greater			20.1	18.8	6.7	7.7	5.8	5.1	4.0
Over \$15.00 greater	18.0	19.3							
Statutory Maximum	20.9	18.7	53.2	62.2	71.8	71.1	87.0	87.8	92.0
C. Maximum Duration of Benefits									
1 Basic Benefits									
Greater than 26 weeks	7.8	7.9	7.7	7.0	10.9	11.0	10.8	10.9	10.8
2 Hospital Benefits									
1 day greater					21.9	23.0	27.8	31.4	33.1
2 days greater	0.4	0.3			2.1	2.4	2.8	3.1	0.3
Over 2 days greater	6.8	6.7	0.7	0.8	2.5	3.7	2.6	2.7	0.4
Total above maximum duration	7.2	7.0	0.7	0.8	26.5	28.1	33.2	37.2	33.8
D. Greater Daily Hospital Benefits									
	1.5	1.5	2.3	0.9	0.5	0.5	0.6	0.7	0.4
E. Miscellaneous Benefits									
Employees contribute less than 1%	9.0	10.2	11.4	11.9	14.6	13.5	16.1	15.7	16.1
Basic Benefits paid in addition to wage continuation	60.1	60.5	80.6	80.3	73.0	74.4	53.8	49.0	40.5
Six weeks Pregnancy Benefits ^b	11.3	11.6	11.6	12.2	12.5	12.4	10.2	9.1	8.3

^a "Eligibles" represent employment at the inception of the plans.

^b Figures represent the percentage of women covered by all voluntary plans who are eligible for the pregnancy benefits.

SOURCE: California Department of Employment.

declined rapidly after that year, as the increasing statutory benefits impinged more and more on the ability of private carriers to pay larger benefits and still operate at a profit. It is estimated that the value of greater rights was only 1.6 percent of voluntary plan benefits in 1958. This percentage is probably even less today.

TABLE III
Estimated Additional Benefits Paid by Voluntary Plans
for "Greater Rights," 1947-1958

(in millions of dollars)

Year	Voluntary plan benefits as paid	Estimated benefits payable to voluntary plan beneficiaries without greater rights	Estimated additional benefit paid for greater rights [(2)-(3)]	Greater rights benefits as a percentage of paid voluntary plan benefits [(4)-(2) × 100] ^a
(1)	(2)	(3)	(4)	(5)
1947.....	\$6 1	\$3 9	\$2 2	35 9%
1948.....	10 6	7 7	2 9	27 1
1949.....	18 3	11 4	6 9	37 6
1950.....	24 8	16 6	8 2	33 1
1951.....	32 9	19 0	13 9	42 2
1952.....	37 6	25 7	11 9	31 6
1953.....	37 9	28 2	9 7	25 6
1954.....	36 3	30 9	5 4	14 8
1955.....	36 1	33 3	2 8	7 7
1956.....	40 7	37 4	3 3	8 0
1957.....	43 8	41 6	2 2	5 0
1958.....	45 8	45 1	7	1 6
12 year total..	\$370 7	\$300 8	\$69 9	18 9%

^a Computed from unrounded figures. Components may not add owing to independent rounding.

NOTE: Benefit payments do not include voluntary plan assessments for extended liability benefits, but are limited to those benefits accruing for workers employed and covered by a voluntary plan at the onset of the disability.

SOURCE: California Department of Employment.

3 Disability Fund Experience 1947-1959

The State Plan Disability Insurance Fund collects as premiums for disability insurance 1 percent of the first \$3,600 earned during a calendar year by each worker in subject employment who is not employed by an employer covered by a voluntary plan or excused from coverage under Section 2902, Unemployment Insurance Code. Voluntary plan carriers also receive worker premiums up to 1 percent of the first \$3,600 earned by each worker covered by a voluntary plan. A voluntary plan carrier may collect less than the 1 percent premium from the employee, and the employer himself may pay part or all of the premium or may supplement it. From the inception of the program in 1946 until the end of 1957, the limitation on a worker's annual premium was \$30—1 percent of all annual wages up to \$3,000. A change in the law effective on January 1, 1958, raised the maximum annual premium to \$36—1 percent of a worker's annual wages up to \$3,600. Table IV presents the history of the State Disability Fund from 1947 until 1959. As is apparent, total receipts (Column 3) have increased from \$51.7 million in 1947 to \$77.0 million in 1959. Total

disbursements, however, outstrip the increase in receipts. In 1947, disbursements were \$19.5 million while in 1959, they were \$92.4 million. As a result, the fund balance which had, until 1957, increased every year, fell from a high of \$144.2 million at the end of 1956 to \$110.2 million at the close of 1959. The increase in the fund's yearly deficit and a concomitant reduction of the balance in the fund can largely be attributed to the raise in benefits the Legislature has authorized since 1957. This raise in benefits was not matched by an equally large rise in the premium tax. This was consciously done by the Legislature because it was the general feeling among all those connected with the Disability Fund that the reserves of the fund were much too excessive for the projected needs of the fund.

Table V presents comparable figures for the voluntary plans showing the effect of the 1957 raise in benefits. However, the voluntary plans, because of their ability to select their risks to some extent, have not shown so great a deficit comparatively as has the State Plan. The 1959 General Session of the Legislature again gave a much-needed raise in disability benefits when it increased benefits to a maximum of \$65 per week.

Table VI is a projection of the fund balance through 1962 based on benefit levels established by the 1959 Session of the Legislature. These projections were based on two assumptions: (1) that unemployment rates of 3.8 percent in 1960, 5.2 percent in 1961, and 4.4 percent in 1962 would prevail, and (2) that the voluntary plans will reduce their share of covered employment from the 42 percent estimated for 1959 to 35 percent for 1960, 1961, and 1962. The first assumption that an unemployment rate of 3.8 percent would exist in 1960 has proved inaccurate since present conditions seem to indicate an unemployment rate of closer to 5.5 percent will prevail for the year 1960.

Nonetheless, the projection does indicate that the fund balance will be reduced by the end of 1962 to 47.2 million dollars. It is therefore incumbent upon the 1961 General Session of the Legislature to enact legislation which will prevent the fund from becoming nearly insolvent after the year 1962.

The following major assumptions were used in the projections of the Disability Insurance Fund cash transactions through calendar year 1962:

1. Economic conditions will prevail as reflected by unemployment rates of 3.8 percent in 1960, 5.2 percent in 1961, and 4.4 percent in 1962.

2. Voluntary plans will reduce their share of covered employment from the 42 percent estimated for 1959 to 35 percent for 1960, 1961, and 1962.

3. There will be no changes in the Code except those made by the 1959 Legislature.

4. The order in which bond issues will be sold will be selected to minimize capital losses rather than to maintain nominal yield rates, when (as is expected) bonds must be sold below face value.

5. Premium or loss on bond market transactions have been previously added to, or deducted from other earnings on investments, and this practice will continue, even though this may produce a negative net figure for earnings in any given year.

TABLE IV
California Disability Insurance Program—Changes in the Disability Fund 1947-1959

Year	Fund balance at beginning of year	Total receipts	Total disbursements	Excess of receipts over disbursements	Net adjustments to fund balance	Fund balance at end of year
1	2	3	4	5	6	7
1947	\$28,822,930	\$51,717,039	\$19,519,866	\$32,197,183		\$61,020,112
1948	61,020,112	47,112,701	24,103,218	23,009,483		84,029,595
1949	84,029,595	37,700,047	25,660,372	12,039,775		96,069,370
1950	96,069,370	36,550,937	28,622,388	7,928,549		103,997,919
1951	103,997,919	38,707,858	26,920,681	11,787,174		115,785,093
1952	115,785,093	41,720,598	32,396,447	9,324,151	—\$21,968	125,087,277
1953	125,087,277	45,785,399	36,971,446	8,813,953	—242,644	133,658,586
1954	133,658,586	49,509,671	47,644,023	1,865,648	+ 164,612	135,988,846
1955	135,988,846	54,692,058	49,031,407	5,660,651		141,619,497
1956	141,619,497	59,112,487	56,478,125	2,634,362		144,253,859
1957	144,253,859	61,409,332	64,651,552	—3,142,320		141,111,640
1958	141,111,640	69,712,966	85,137,825	—15,424,859		125,686,781
1959	125,686,781	77,065,622	92,469,080	—15,403,438		110,283,344

NOTE: Components may not add to totals owing to independent rounding.
SOURCE: California Department of Employment.

TABLE V
California Disability Insurance Program
Appendix Table 30—Voluntary Plan Experience 1949-1958

Year	Premiums earned	Refunds and credits	Net premiums	Dividends to policyholders	Benefit losses incurred	Total expenses ¹	Surplus or deficit ²
1	2	3	4	5	6	7	8
1949.....	\$26,310,267	\$876,249	\$25,434,018	\$779,314	\$17,410,297	\$5,858,509	\$1,385,897
1950.....	31,726,825	411,243	31,315,582	936,474	24,505,988	6,476,488	—603,368
1951.....	40,703,829	848,931	39,854,848	492,253	32,324,147	7,391,360	—352,912
1952.....	45,555,579	944,222	44,611,357	458,336	36,934,308	8,068,628	—849,916
1953.....	48,462,794	1,215,923	47,246,871	624,098	37,307,155	8,120,906	1,194,708
1954.....	44,993,370	1,559,696	43,433,674	696,640	35,838,631	7,615,763	—620,409
1955.....	47,620,893	2,306,845	45,314,048	870,167	35,499,365	7,345,569	1,628,357
1956.....	51,823,390	2,153,434	49,669,906	906,922	39,929,789	7,218,509	1,614,686
1957.....	54,158,720	2,010,708	52,148,012	793,109	43,914,844	7,283,736	1,156,323
1958.....	53,492,070	714,705	52,777,365	711,810	44,781,499	7,293,887	—9,531

TOTAL SURPLUS 1949-1958 \$4,544,109

¹ Consists of claims expenses, commissions and other acquisition expenses, field supervision expenses taxes license, and government fees and charges

² Consists of the difference between column 4 and the sum of columns 5, 6, and 7

NOTE Information is not available prior to 1949 or, at time of publication, for 1959

SOURCE California Department of Employment

TABLE VI
**Estimates of Cash Transactions of the Disability Insurance Fund
 1959 Through 1962**

(in millions of dollars)

Item	Calendar year			
	1959	1960	1961	1962
Net Income to Fund.....	\$77.3	\$90.9	\$98.7	\$104.1
Net worker contributions.....	73.3	89.9	95.5	100.6
Net income from investments.....	2.4	1.0	0.6	-0.7
Income from investments.....	3.1	2.2	1.6	1.0
Losses owing to sale of bonds.....	(-0.7)	(-1.2)	(-1.0)	(-1.7)
VP assessments for benefits.....	4.6	None	2.6	4.2
Total Expenditures.....	\$82.5	\$110.7	\$120.9	\$125.4
Total net benefit payments.....	87.2	105.0	114.9	119.1
State Plan benefits.....	68.7	88.0	92.3	97.4
Extended liability benefits.....	18.5	4.3	None	None
Projected benefits.....	None	12.7	22.6	21.7
Administrative costs.....	5.3	5.7	6.0	6.3
Net Cash Loss to Fund During The Year.....	\$15.2	\$19.8	\$22.2	\$21.3
Fund Balance December 31.....	\$110.5	\$90.7	\$68.5	\$47.2

a Extended liability assessments accrued during calendar year 1958

b Projected benefits assessment

SOURCE California Department of Employment

4. Methods of Increasing Income to the State Fund

Table VII presents estimates of the effect of raising either the worker contribution rate or the taxable wage ceiling as a means of increasing the income to the Disability Insurance Fund. In a calendar year such as 1960, it is presently estimated that the State Fund will receive in net income \$90.7 million while its expenditures shall be \$110.7 million. This will mean that the State Fund must increase its income by at least \$20 million in order not to operate at a deficit. This can be done by either increasing the worker contribution rate from the present 1 percent or the taxable wage ceiling from the \$3,600 limitation, or by a combination of the two. For example, if the premium rate were 1 percent of the first \$4,200 of taxable wages, the State Plan would have an income of \$100.3 million or an increase of \$9.6 million over present projections or by increasing the tax to 1 percent of the first \$4,800 of taxable wages, the fund would be increased by \$16.8 million.

However, it should be noted that whenever the taxable wage ceiling is increased to benefit the State Plan income, the voluntary plan income, which is also determined by the same statutory limitations, is increased by a greater percentage. For instance, raising the taxable wage ceiling to 1 percent of the first \$4,200 of taxable wages would increase the State Plan's income by 10.6 percent, while the voluntary plan income would be increased by 12.5 percent. Any change such as this would, therefore, benefit the voluntary plans to a greater extent than it would the State Plan. This results from the fact that the volun-

tary plans generally cover a greater percentage of workers who earn proportionately higher total incomes than the State Plan wage earners. Proportionately more voluntary plan covered employees earn \$4,200 or \$4,800 per year.

TABLE VII

California Disability Insurance Program

Estimated Effect of Increasing the Taxable Wage Ceilings and Increasing the Worker Contribution Rates With the State Plan Covering 65 Percent of Covered Employment in a Year Like Calendar Year 1960

A—ESTIMATES OF PREMIUMS EARNED

(in millions)

Worker contribution rate	Taxable wage ceiling					
	\$3,600		\$4,200		\$4,800	
	State Plan	Voluntary plan	State Plan	Voluntary plan	State Plan	Voluntary plan
1 0%	\$90 7	\$55 2	\$100 3	\$52 1	\$107 5	\$68 4
1 5	136 1	82 8	150 5	93 2	161 2	102 7
2 0	181 4	110 4	200 6	124 2	215 0	136 9

B—ESTIMATES OF AMOUNT OF INCREASE IN PREMIUMS EARNED ABOVE CURRENT SCHEDULE

(in millions)

Worker contribution rate	Taxable wage ceiling					
	\$3,600		\$4,200		\$4,800	
	State Plan	Voluntary plan	State Plan	Voluntary plan	State Plan	Voluntary plan
1 0%	\$0 0	\$0 0	\$9 6	\$6 9	\$16 8	\$13 2
1 5	45 4	27 6	69 8	38 0	70 5	47 5
2 0	90 7	55 2	109 9	69 0	124 3	81 7

C—ESTIMATES OF PERCENTAGE INCREASE IN PREMIUMS EARNED ABOVE CURRENT SCHEDULE

Worker contribution rate	Taxable wage ceiling					
	\$3,600		\$4,200		\$4,800	
	State Plan	Voluntary plan	State Plan	Voluntary plan	State Plan	Voluntary plan
1 0%	0 0%	0 0%	10 6%	12 5%	18 5%	24 0%
1 5	50 0	50 0	65 9	68 8	77 8	66 0
2 0	100 0	100 0	121 2	125 0	137 0	148 0

SOURCE: California Department of Employment

5. Estimates of Disability Fund Experience on the Assumption of Exclusive State Coverage

As initially contemplated, the California disability insurance legislative proposal had no provisions for the participation of private insurers in the disability insurance field. Their inclusion, undoubtedly, had a marked effect on the subsequent legislative and financial history of the program, and it would be unrealistic to think that the program, without voluntary plans, would have had the same character as it did with them. Nevertheless, conjectures have been made and interest has been expressed as to what the experience of the Disability Fund would have been had voluntary plans not been authorized and assuming that the subsequent legislative history of the program had been the same as it was.

An exclusive State Plan coverage would have had the following consequences:

- (a) All worker contributions would have been collected by the State Fund.
- (b) The State would have paid all claimants the statutory benefits, and would not have provided any of the greater rights required of voluntary plans.
- (c) To the State Fund would have accrued, in addition to its actual surplus, the surpluses of contributions over benefits from the workers actually covered by voluntary plans, plus interest on the additional surplus.

Since voluntary plan coverage was a better risk than actual State Plan coverage and had better wages, the State Plan, as sole insurer, would have experienced lowered cost ratios than it had in fact (the cost ratio being the ratio of benefit payments to taxable wages). Table VIII shows the actual cost ratios and the hypothetical cost ratios for each year since 1947 including projections through 1962.

The cost ratios under exclusive State Plan coverage given in Table VIII have been calculated under the following assumptions:

- (a) The filing rates by sex and age group would be the same for the actual State Plan eligible employment and for the balance of the employment which was covered by private insurers.
- (b) The average duration of benefits per claim would be the same for State Plan claims actually filed and for claims that would have been filed under the State Plan rule for the balance of covered employment.
- (c) The weekly benefit amount for the claims that would have been filed under State Plan rules by that portion of employment that was not actually covered by the State Plan would be higher than the amount for claims actually filed under regular State Plan coverage.
- (d) Exclusive state coverage would have made no difference in the legislative history of benefit provisions.

Under the hypothesis of exclusive state coverage, the fund would have paid all the benefits to the unemployed (the "extended liability" or "prorated" benefits), while under actual State Plan coverage some

of these benefits were paid by private insurers. Therefore, the cost ratios under sole state coverage are lower than the actual State Plan cost ratios, not only because the added coverage would have been a better risk than State Plan employment, but also because the added share of benefits to the unemployed would be much smaller than the added share of taxable wages.

The cost ratios under the hypothesis of exclusive State coverage would have been smaller than the 1 percent premium rate through 1957. Being also smaller than the actual State Plan cost ratios and being applied to all covered employment instead of to State Plan employment, the cost ratios for sole State coverage would have afforded much larger surpluses to the Disability Fund than the fund actually experienced. These additional surpluses, cumulated into the fund, would have earned additional interest which also would have gone to swell the fund.

Finally, the added claims load produced by exclusive coverage would have cost very little additional to process, while the cost connected with voluntary plan administration would not have been incurred. The added administrative cost of exclusive coverage, therefore, would have been very small. The estimates of administrative costs for exclusive coverage are well below the combined sums expended by the State Plan and by the voluntary plans operating independently. For example, in 1958, the State Plan spent \$4.5 million (accrued) and the voluntary plans \$5.9 million in administering their separate programs for a total of \$10.4 million, while the estimated cost of administering an exclusive State Plan is estimated at \$4.9 million, with a savings of \$5.5 million.

TABLE VIII
Actual State Plan Total Benefit Cost Ratios and Estimated Cost Ratios Under
Hypothetical Exclusive State Plan Coverage, By Year, 1947-1962

(Benefits as percentages of taxable wages)

Calendar year	Actual total benefit ^a cost ratio, State Plan	Estimated total benefit cost ratio under exclusive State coverage ^b
1947	0.36%	0.35%
1948	0.40%	0.40%
1949	0.64%	0.55%
1950	0.76%	0.64%
1951	0.07%	0.57%
1952	0.75%	0.60%
1953	0.79%	0.70%
1954	0.96%	0.86%
1955	0.90%	0.83%
1956	0.95%	0.87%
1957	1.05%	0.95%
1958	1.18%	1.03%
1959	1.19%	1.03%
1960	1.17%	1.06%
1961	1.20%	1.11%
1962	1.18%	1.10%

^a Total benefits paid by the Disability Insurance Fund from 1947-1958 include nonextended liability and extended liability benefits less voluntary plan assessments for extended liability, while the estimates for 1960-1962 include the regular State Plan benefits and prorated benefits less voluntary plan assessments for prorated benefit payments.

^b Cost ratios under exclusive State coverage exclude the benefit value of voluntary plan greater rights.

SOURCE: California Department of Employment.

The Disability Fund under exclusive State coverage and under the assumptions stated would have grown to a maximum of a little over \$305 million by the end of 1957 when the State Fund was in actuality \$141 million (See Table IX). It would have dropped to an estimated \$268 ½ million by the end of 1962, assuming that benefit provisions remain the same in 1960, 1961, and 1962, as those passed by the 1959 Legislature and is likely to be \$47 2 million by the end of 1962 under the present Code

TABLE IX
Hypothetical Disability Fund Experience Under Exclusive State Coverage
Compared With Actual Experience, By Year, End of 1946-1962

(in millions)

Year	Actual Fund balance as of December 31	Estimated Fund balance as of December 31 assuming exclusive State coverage
1946	\$28 8	\$28 8
1947	61 0	67 7
1948	84 0	102 2
1949	96 1	130 2
1950	104 0	155 1
1951	117 8	189 3
1952	125 1	219 0
1953	137 7	247 6
1954	136 0	262 7
1955	141 6	281 5
1956	144 3	297 2
1957	141 1	305 4
1958	125 7	304 9
1959	110 5	303 5
1960	90 7	297 6
1961	68 5	283 4
1962	47 2	268 4

SOURCE: California Department of Employment

Conclusion

If the State had been the only insurer, the Disability Fund would have accumulated to about three times the size of the actual State Fund by the end of 1959, assuming the same legislative history of benefit provisions. This would have occurred not only because of the larger amounts of premium collected from the coverage actually taken over by the voluntary plans, but also because of savings in the cost of administering one program, and additional interest earned by the larger Fund. The benefit payout under exclusive State coverage would have been much smaller than the summation of actual State Plan and voluntary plan benefits, because the private carriers, under the provisions of the law, were required to pay greater benefit rights than the State Plan.

6 Workers Claims for Refunds of Excess Premium

The California Unemployment Compensation Disability Program is financed by premiums from the workers covered by the law. From the inception of the program in 1946 until the end of 1957, the limitation on a worker's annual premium was \$30—1 percent of his annual wages

up to \$3,000. A change in the law effective on January 1, 1958, raised the maximum annual premium to \$36—1 percent of a worker's annual wages up to \$3,600.

In order to simplify the collection of premium, the law requires each employer covered by the State Plan to withhold from each of his employees 1 percent of the first \$3,000 (\$3,600 beginning in 1958) in wages the worker is paid by such employer during a given calendar year. The employer then transmits the premium to the Disability Insurance Fund after the close of each calendar quarter, or, if the employer is covered by a voluntary plan, to the insurance carrier as specified in the voluntary plan contract.

Under the system described above, if a person were to work for more than one covered employer during a year, the total amount of disability insurance premiums withheld from his wages could well exceed the \$30 or the \$36 limit. The law provides for the refund of the premium overpayment to wage earners who make a claim for such refund. So far, worker refunds have been less than half of the total premium overpayment.

During the period 1950 through 1958, the workers covered by the entire Disability Insurance Program contributed an estimated \$54.9 million in excess of the statutory premium. This amount corresponds to 6.62 percent of the premium required by statute.

During 1950-1958, approximately \$19.8 million of excess premium was claimed by workers and refunded to them, or about 36 percent of all the excess premiums collected. The remaining 64 percent or \$35.1 million was not claimed by the workers and was retained by either the state plan or a voluntary plan, whichever collected the premium in the first instance.

About 56 percent of the refunds for premiums above ceiling made during 1950-1958 were paid by the State Plan, and 44 percent by the private carriers.

Table X indicates the extent to which overpayments of premium have been collected under the program.

The excess premium collected increased each year from 1950 through 1957. The amount nearly quadrupled during the period, from \$2.4 million in 1950 to \$9.4 million in 1957. As a percentage of the regular premium, the excess premium more than doubled from 3.64 percent in 1950 to 8.81 percent in 1957. A 1958 decrease in total amount collected is due to the increase in taxable ceiling effective January 1, 1958. It is expected that in 1959 and after, the amount of excess premium collected will again increase.

During the period under consideration, workers claimed and received almost \$20 million as refunds for excess premiums. This total amount represents about 36 percent of all excess premiums on wages paid in the period. (See Table XI.)

The California Unemployment Insurance Code provides that all refunds to workers for excess disability insurance premiums will be made from the State Disability Fund and that private insurers will be assessed for a portion of the refunds made. Of the total refunds paid by the Disability Fund, the proportion to be assessed against the voluntary plans is determined by the ratio of voluntary plan taxable wages involved in the refund to the total taxable wages involved in the refunds.

The total voluntary plan assessment is allocated among individual insurers on the basis of the proportion of voluntary plan taxable wages involved in refunds. Table XII gives the amount and share of refunds which were assessed against voluntary plan carriers compared with the share of all taxable wages paid to workers covered by voluntary plans.

These data indicate that the voluntary plan assessments for worker refunds have consistently been lower than the voluntary plan share of all taxable wages earned during the given year. For the period as a whole, voluntary plan assessment for worker refunds represented 43.9 percent of all refunds while voluntary plan taxable wages were 49.7 percent of all taxable wages.

TABLE X
Excess Premiums Collected on Wages Paid in 1950-1958

Table X indicates the extent to which overpayments of premium have been collected under the program.

**Estimates of Premiums Collected in Excess of Statutory Limit
on Wages Paid in 1950-1958**

Calendar year	Excess premium collected		
	Amount ^a	As a percentage of regular premium ^b	Average amount of premium overpayment
1950-1958.....	\$54,872,000	6.62%	----
1950.....	2,437,000	3.64	\$8.66
1951.....	3,910,000	5.14	9.70
1952.....	4,900,000	5.90	8.51
1953.....	5,302,000	6.01	8.90
1954.....	5,272,000	6.01	9.25
1955.....	6,751,000	7.12	10.06
1956.....	8,898,000	8.64	11.40
1957.....	9,438,000 est	8.81	11.58
1958.....	7,964,000 est	6.51	11.98

^a Estimated on the basis of taxable wages in excess of statutory ceiling as reported for a one percent sample of wage earners.

^b Regular premium is one percent of all the wages paid up to the taxable ceiling per person. It does not include any excess premium.

SOURCE: California Department of Employment.

TABLE XI
Amount of Refunds Claimed and Paid, 1950-1958
Amount of Refunds Claimed by Workers by Year in Which the
Wages Were Paid 1950-1958

Calendar year	Amount of refunds	Refunds as a percentage of excess premium collected
Total 1950-1958.....	\$19,820,442	36.1%
1950.....	837,231	34.4
1951.....	1,023,268	26.2
1952.....	1,323,322	27.0
1953.....	1,790,031	33.2
1954.....	1,581,118	37.6
1955.....	2,626,502	38.9
1956.....	3,402,903	38.2
1957.....	3,680,638	39.0
1958.....	3,185,429	40.0

SOURCE: California Department of Employment.

TABLE XII

Voluntary Plan Assessments for Worker Refunds, Accrual Basis 1950-1958

Calendar year	Total worker refunds	Voluntary plan assessments		Voluntary plan share of all taxable wages
		Total amount	As percent of all worker refunds	
1950-1958.....	\$19,820,442	\$8,702,180	43.9%	49.7%
1950.....	1,937,231	\$382,419	45.7	50.2
1951.....	1,023,268	477,524	46.7	54.8
1952.....	1,323,322	619,933	46.8	54.9
1953.....	1,700,031	818,861	46.5	55.9
1954.....	1,981,118	845,435	42.7	49.0
1955.....	2,676,502	1,136,677	42.5	48.3
1956.....	3,402,903	1,519,615	44.7	47.6
1957.....	3,680,636	1,528,964	41.5	47.7
1958.....	3,186,429	1,372,732	43.1	44.9

The total voluntary plan assessment is allocated among individual insurers on the basis of the proportion of voluntary plan taxable wages involved in refunds.

SOURCE: California Department of Employment.

Table XII gives the amount and share of refunds which were assessed against voluntary plan carriers compared with the share of all taxable wages paid to workers covered by voluntary plans.

7. The Assessment of Voluntary Plans for Disability Insurance Benefits Paid to the Unemployed

Disabled persons who are not in covered employment at the onset of their disability—the "unemployed" claimants—may receive benefits from the State Disability Fund if they meet the base period earnings requirements established by the Code. The claimants may have contributed to the State Fund or to one or more voluntary plans during the time when they were in covered employment. In some cases they may remain eligible to receive benefits when disabled up to 18 months after leaving covered employment.

The 1946 law establishing the Unemployment Compensation Disability Program included voluntary plan coverage by private carriers or by self-insurers, but made no provision for recouping the cost of benefit payments attributable to voluntary plan base period earnings. In 1947, the Legislature established an extended liability account for the purpose. The 1959 Legislature suspended the account and the provisions for its upkeep and replaced them with the concept of "Prorated Benefits."

The 1947 amendment created an extended liability account as a separate account of the Disability Fund, to which were charged the benefit payments to workers who were either unemployed or working in noncovered industries at the onset of their disabilities. It was not on account in the sense that it contained identifiable assets but was, rather, a complicated statistical device for computing the assessments against the State and voluntary plans for their respective share of

payments to extended liability claimants. The extended liability account had three sources of credits:

- (a) The account was credited annually with a calculated interest amount (Sec. 3102 of the Code). The multiplier used in the calculation was the average rate of interest on all investments of the Disability Fund, including the amount in the Unemployment Fund collected during 1944 and 1945 subject to requisition for disability compensation. The multiplicand was the sum contributed by covered workers to the Unemployment Fund during the calendar years 1944 and 1945 plus the amount of worker contributions to the Disability Fund prior to December 1, 1946.
- (b) If, after entering the calculated interest credit, there remained a cumulated deficit in the extended liability account, the voluntary plans were assessed (Sec. 3103 of the code) and the extended liability account credited with the amount of the assessment. The assessment was computed by determining the ratio of the account's year-end deficit to all disability insurance taxable wages and applying that value to those wages subject to voluntary plan coverage. The maximum assessment permitted in a single year was 0.03 percent of the wages covered by voluntary plans.
- (c) A similar computation was performed on the wages subject to the State Plan, and the extended liability account was credited with an amount equal to the product of the same ratio and State Plan wages. As with the voluntary plan assessment, the credit could not exceed 0.03 percent of taxable wages.

Any deficit or positive balance remaining after making the appropriate credit entries was carried over to future periods.

The extended liability account as it operated under the 1947 amendment showed a positive balance only for two years. At the end of 1949 there was a deficit, and the deficit has grown at an increasing rate every year since then. In 1959, an amendment was passed to the extended liability provisions established in 1947.

Early in 1959, the Department of Employment asked the Legislature to halt growth of the deficit in the extended liability account by providing that extended liability costs would be shared fully and on a current and equitable basis.

As enacted by the Legislature, the amendment radically changed computation of the liability for benefits paid to the unemployed. The new program:

- (a) Substituted the term of *prorated benefits* for the old one of *extended liability benefits*.
- (b) Kept the interest credit in a slightly modified form.
- (c) Provided for the proration of benefits paid to the unemployed according to base period wages.
- (d) Raised the ceiling on the voluntary plan assessments for prorated benefits to 0.2 percent of voluntary plan wages.
- (e) Cancelled the voluntary plan assessment for extended liability benefits paid and incurred in 1959.

- (f) Suspended the extended liability provisions and the extended liability account

The last amendment left the deficit in the suspended liability account for reconsideration by the Legislature in 1961. Unless legislative action is taken in 1961, the extended liability account will be reinstated in 1962 without the prorated benefit provisions being repealed.

From the inception of the extended liability account through December 1958, benefit charges have amounted to \$105.8 million. Imputed interest credits of \$38.1 million, in conjunction with voluntary plan assessments of \$13.5 million and State Plan credits of \$13.9 million, have left a cumulated deficit of \$40.3 million as of December 31, 1958, after all credits and assessments.

Had the account not been suspended by the 1959 Legislature, the deficit would have reached an estimated \$93.2 million by the end of 1962.

CONCLUSIONS

- (a) That the lack of meaningful adverse selection criteria by the Department and the suspension of the adverse selection provision of the Unemployment Compensation Disability Act by the Legislature has substantially affected the Disability Fund, to its detriment.
- (b) That the greater rights requirement, although at one time providing substantially greater benefits than the statutory minimum, has ceased to be of any great importance to the workers covered by voluntary plans.
- (c) That both the voluntary plans and the State Fund have, because of the retention of unclaimed premiums in excess of the statutory minimum, had the benefit of a windfall profit amounting to many millions of dollars.
- (d) Because of the rapid depletion in the State Fund reserves, it will be necessary to secure additional revenues to provide adequate financing for the Fund.

Recommendation

That the extended liability provisions of the Act should be repealed without prejudice to recovery by the proper agency of any obligation which may have accrued thereunder and a prorated benefits provision be made permanent.

REPORT OF GENERAL INSURANCE SECTION

1. AUTOMOBILE PARTS WARRANTIES

A B 2703 (Holmes) was introduced at the 1959 Regular Session for the purpose of requiring purveyors of performance warranty contracts on motor vehicles, household appliances and the like to obtain permits from the Commissioner of Insurance. The latter would have been empowered to adopt regulations regarding solvency of the firms and their ability to discharge contractual obligations.

It was in the area of auto parts warranties that most abuses developed and, for this reason, a public hearing was held on November 30, 1959, in the Board of Education Hearing Room, 170 Fell Street, San Francisco Assemblyman Alan G. Pattee presided.¹

Appearing before the committee were Joseph D. Thomas, Chief Assistant Insurance Commissioner; Frank Fullenwider, Deputy, Department of Insurance; Harold B. Haas, Deputy Attorney General; Neil Cunningham, representing Carter, Tilton and Ruppe, counsel retained by National Bonded Cars; Allen D. Vogel, former counsel for Sur-Car of America; Rena M. Kanelos, Independent Auto Dealers Council of California; Leonard Alama, former San Jose agent for Registered-Tested Cars; William A. White, counsel for Premier Insurance Company; William O. McMahon, President, Automobile Mechanical Insurance Agency; Terence A. Hill, Senior Vice President, Balfour-Guthrie Insurance Company.

The companies doing the bulk of the business in California were united in the Consolidated Warranty System of Springfield, New Jersey, and held common reserves.²

Numerous complaints of unethical practices on the part of these companies were made to Insurance Commissioner F. Britton McConnell in November, 1957, on the advice of Deputy Attorney General Harold B. Haas. Mr. McConnell issued a "cease and desist" order to the companies to halt operations. National Bonded Cars brought suit in San Francisco Superior Court for an injunction against the commissioner. Judge Eustace Cullman granted a temporary injunction in January, 1958, and hearings were held in the summer of 1959 on a move to make the injunction permanent, but before rendering his formal decision, Judge Cullman died. When the matter came up in another court on December 14, 1959, the presiding judge found in favor of the State for lack of contest.

In addition to the Holmes Bill, the committee had before it a bill drafted by Mr. Levy on the basis of a Florida statute and two alternative drafts prepared by the Department of Insurance.

¹ Other committee members in attendance: Assemblymen Ronald B. Cameron, Robert W. Crown, Bert DeLotto, John A. O'Connell, Thomas M. Rees, W. Byron Rutherford, Howard J. Thelin, and Jesse M. Unruh.

² The companies comprising the system are: Registered-Tested Cars, Inc.; National Bonded Cars, Inc.; Auto Warranty Company; Auto Life Plan; Sure-Car of America.

Mr. Thomas described the department's bills: "The substance of them is to define this warranty business as insurance so there'll be no question about that. That was what happened in New York. They had an adverse Attorney General's opinion; the next Session of the Legislature made it insurance. And that's been the rule in a good many of the states, although there are still some of them where these things are either undefined or are termed to be noninsurance. Now, these bills * * * may be [subjected] to a good bit of editing and comment * * *. One of them, the alternate number one, is drawn with some blanks in it to carry out what I understood Assemblyman Holmes' original position was. He wasn't worried much about auto warranties, he was worried about television sets or radio sets or something else * * *. So, alternate number one is set up so that other things besides automobiles could be put in there if that was the desire of the committee."

Mr. Haas indicated his approval of the Department's drafts and both he and Mr. Thomas indicated their belief that the Holmes Bill contains defects in wording since it could be construed as applying to a dealer's own warranty.

Mr. Fullenwider testified that, as of November, 1957, there were 21 companies issuing automobile warranties backed by their own credit and assets. Since the Insurance Commissioner issued his order, five of them became agents for insurance companies, but the bulk have dropped out of the field, so that only three are left today. These companies, of their own volition, have decided to write warranties as insurance policies.³

By October, 1959, the Consolidated System had suspended all its operations in California. In November, Mr. Thomas wrote the committee consultant, "The group of organizations which sold the bulk of the coverage in California now admits to insolvency to the extent of \$700,000 or \$800,000 after collecting about \$1,000,000 from reinsurers and is now suing another reinsurer for about \$500,000."

Describing the complaints which the Department has received, Mr. Fullenwider told the committee "A large number of them can't get the repairs authorized. It is a condition precedent in practically all of the contracts, whether they be automobile warranty or whether they be insurance company mechanical breakdown insurance, that the repairs be authorized before they can be made. So a person finds himself in a situation of his car having broken down, he takes it into a garage, and then he tries to get hold of the [agent] to get the repairs authorized. And, of course, if the * * * company has become insolvent or has closed substantially all of [its] offices, he can't even get the first step taken * * *."

He went on to state that statistics show that the bulk of complaints arise from insolvency of the companies or the inability of claimants to get service or even a mere response from the company.

Mr. Fullenwider observed that, if Consolidated obtains the money it has claimed from its reinsurers, it could very well resume its business in California. Assemblyman Rees asked what obligation Consolidated has to pay its claims outstanding.

³ The three companies: Equity General Insurance Company of Florida (with home office in Boulder, Colorado), Balfour-Guthrie Insurance Company of California, Premier Insurance Company of California.

MR FULLENWIDER: Well, your obligation would be your same obligation that you have on any other contract * * * and your remedy would be, as many people are doing, to simply sue and get a judgment against them and then if they have money, why you go ahead and use your normal legal process to get it

ASSEMBLYMAN REES. But in California, in terms of the state, in terms of your Department, and in terms of our own courts, we're pretty helpless because they're not doing business here. They have no agent here.

MR FULLENWIDER. As far as the Department of Insurance is concerned, we're helpless, yes, sir.

Chairman Pattee asked Mr. Vogel what kind of legislation he would favor. In his response, the latter stated his impression that failure to meet claims on the part of the companies resulted from their failure to reserve warranty payments against that eventuality and, moreover, a substandard system of maintaining records. He testified that one of the subsidiaries, Sure-Car, had operated on a sound basis and, therefore, encountered no difficulty in honoring claims against it up to the time it withdrew from the business.

Mrs. Rena M. Kanelos pursued the point of the dealer's responsibility in the warranty problem. "There is a very stringent dealer's licensing law which requires that any warranty [or the like] given to a customer can affect a dealer's license," she observed. "If, at any time, that warranty or implied guarantee is given to the customer and is violated, our dealer's license is up in front of [the Director of the Department of Motor Vehicles]." She went on to complain that poor performance on the part of a warranty company hurts the auto dealer. "We either have a one-shot customer or we put in the two or three hundred dollars that is involved sometimes on a major overhaul," she stated. "We have had a great deal of bad public relations on this very subject." Mrs. Kanelos claimed that the selling of warranties is more trouble than it is worth and asserted that dealers make them available only because the public demands them. But, according to her, it has been difficult to find warranty companies that would provide the kind of service required. She related one instance where all the auto dealers in one locality decided to utilize the services of two companies that appeared to be soundest, from a financial standpoint. Within six weeks, both were out of business.

Mrs. Kanelos concluded by appealing for a law that would either regulate auto warranty companies stringently or else outlaw them altogether.

Mr. White testified that his company (Premier Insurance) has been in the warranty business since June 1958, that they write "policies" exclusively, that they have been able to meet all claims within a reasonable period of time; and that they favor both of the alternatives proposed by the Insurance Department.

Mr. McMahon stated that his firm (Automobile Mechanical Insurance Agency) writes insurance policies for the Balfour-Guthrie Company. AMIA, he announced, favors the department's bills. He also pointed out that his company writes policies on new cars only and utilized, for the most part, its own agents rather than car dealers.

Mr. Hill (of Balfour-Guthrie) told the committee: " * * * I, personally, have a sort of a cringing running up and down the back of my spine whenever I hear this association of warranties and insurance

policies all in the same breath. They are two entirely different things. The people who have not met their obligations in this field are warranty companies. The people who have met their obligations are insurance companies. Speaking for [Balfour-Guthrie], we pay our mechanical breakdown insurance claims in just the same manner as we pay our fire claims or our inland marine claims, or our automobile claims, or any other claims."

On behalf of the Department of Insurance, Mr. Thomas urged the Governor to issue a special call to the Legislature for the Session of 1960. "Since the hearing of [November 30]," Mr. Thomas wrote, "further thought brought to light the obvious fact that there is real danger of new unlicensed organizations entering the business [of automobile warranties] to victimize a second crop of Californians." Mr. Thomas concluded by characterizing the situation as "urgent." The Governor evidently did not agree with the Department of Insurance, and the matter was not placed before the Legislature in 1960.

Conclusion

This committee strongly recommends that legislation be enacted in order to prevent a recurrence of the disgraceful situation brought about by unregulated purveyors of automobile parts warranties. We look with favor on the efforts made by the Department of Insurance in this field.

2. FRANCHISE LIFE INSURANCE

Also considered at the November 30 hearing in San Francisco was the problem of "franchise" or "wholesale" life insurance.

Appearing before the committee were Donald C. Burns, Secretary, California Association of Life Underwriters; John P. McFarland, special counsel for CALU; Richard Wollesen, Legislative Chairman of CALU; Leland B. Groezinger, representing the Life Insurance Association of America; Joseph D. Thomas, Chief Assistant Insurance Commissioner; Gosecoe Farley, representing the California Bar Association; Howard Jeske, representing California-Western States Life Insurance Company; Robert R. Leslie, representing Northwestern National Life Insurance Company; Anthony Kennedy, Joint Legislative Committee of the California State Dental Association and the Southern California Dental Association; L. K. Lloyd, representing L. K. Lloyd, Bernhard and Company, administrators of life and disability programs.

Assembly Bill 2833 (Rees) was approved by the Legislature during the 1959 General Session. The Governor declined to sign it, and it did not take effect.

The bill undertook to define "franchise" or "wholesale" life insurance for the first time. While A. B. 2833 would not affect existing plans, it would restrict and regulate future issues. It set a limit of \$50,000 that might be written on any one member insured under a wholesale plan. It also made clear that group insurance could not be issued to organizations formed solely for the purpose of buying life insurance at the lower group rate.

In his opening remarks to the committee, Mr. Burns noted that California law does not permit the issuance of group life insurance on members of associations, clubs and societies. To get around this prohibition, he said, insurance companies invented the stratagem of "franchise" or "wholesale" life insurance. "In 1958, when the Los Angeles

County Medical Association contracted for a franchise life insurance plan for its members, the California Association of Life Underwriters initiated an Attorney General's opinion as to the plan's legality. For several technical reasons, the opinion ruled that under the existing statutes "the plans were legal."

Mr. Burns went on to state that the major concern of the California Association of Life Underwriters was that the practice of writing wholesale life insurance would spread from professional associations into nonprofessional associations, clubs and societies. He described this as a "bargain basement inducement to buying life insurance at a discount."

"Life insurance can't be sold like a sack of wheat," Mr. McFarland told the committee. He described the use of mortality tables in the writing of individual insurance and stressed that in standard group insurance safeguards are imposed to produce much the same effect. He attacked what he called the "get-rich-quick" wholesale insurers and contended that their operation is no different than the "fleet" type of automobile insurance which has been outlawed for several years. "We believe that there does seem to be a very definite need for some definition of what this kind of insurance is and an assurance that there is such regulation that we don't court disaster. We're just asking for a minimum regulation."

Mr. Wollesen stated that CALU's "underlying motive" in AB 2833 was that the confidence the public has in [the insurance business] be maintained. He also commented: "The history of life insurance has been involved with the history, for example, of the fraternal organizations where good underwriting practices were not involved and as the [groups themselves] got older and older, it created a problem. And this resulted in some of the reforms in life insurance which are part of our history. We're anxious for that not to happen again."

Mr. Burns amplified this matter under questioning by Assemblyman Cameron. The difficulty in the writing of fraternal orders, he maintained, was that they were not soundly underwritten, which meant that premiums subsequently rose. "The younger members found that they could buy the same type of term insurance on an individual basis at less premium cost than that which they were paying, so they dropped the plan. A number of these had a marked effect, again, on the actuarial makeup of the plan and so the premiums were again raised, so that over a period of a few years you had a situation where the only ones left were the uninsurables and elderly people who were paying exorbitant amounts and finally the thing just collapsed."

Chief Assistant Insurance Commissioner Joseph D. Thomas supported this point in his testimony: "The big distinction between a so-called franchise situation and the normal type of group insurance on an employer-employee [basis] is that the employer keeps hiring younger people all the time so that the group generally has approximately the same average age and the policy, then, can go on with the premiums staying substantially as they are and not rising too radically. Whereas, in the franchise arrangement where there's no guarantee or no real likelihood of younger people joining it reg-

ularly, you always run the big hazard of the rate getting higher and higher to the point where nobody can afford it any longer and then the thing collapses."

Regarding the \$50,000 limitation, Mr. Burns explained " * * * We are really envisioning a situation, for example, where your State Bar could have a \$50,000 plan, your San Francisco Bar \$50,000, your Bar-risters \$50,000 and one attorney * * * belongs to [all] * * * We feel that this is not good and that there should be a limitation on how much of this stuff a man should be able to buy."

Mr. Groezinger cautioned that the \$50,000 limitation would be "very, very difficult of administration and policing."

Assemblyman Cameron suggested that all the CALU was really asking was that the Legislature make an "arbitrary distinction" as to what constitutes group insurance and what does not.

MR. WOLLESEN: * * * One reason * * * some of the professional associations did not want to be covered under the group law is that the group * * * requires a minimum participation . .

ASSEMBLYMAN CAMERON: But this is a statutory, arbitrary thing.

MR. WOLLESEN: Well, the reasons for these restrictions in the group code * * * are to * * * insure the safety of the group. In a group, for example, there is no element of personal selection * * * so that the law of averages * * * are imposed by group law. In the franchise area, there are none of these restrictions, generally speaking, except by agreement with the individual company. Therefore, this restriction * * * of the \$50,000 is one way of minimizing the difficulties from the lack of other regulatory devices to protect the underwriting standing of the group.

ASSEMBLYMAN CAMERON: But aren't we * * * creating another type of group insurance * * * rather than amending the existing group statute to accept this problem?

* * * * *
MR. WOLLESEN: You can't really call it group insurance because, by being written as individual policies, they escape the regulation which the statutes impose on group insurance, you see. Our original approach to this thing was to say, "Well, gee, we think it's sort of really unjust that the professional associations should not have group insurance." This present thinking reflects the fact that they have indicated to us that * * * they would prefer to go the franchise method and out of deference to their attitude, we have tried to incorporate them in this definition of franchise insurance.

Mr. Burns asserted that the continued absence of regulation of franchise insurance constitutes an "immediate threat" to the public and urged that consideration be given to CALU'S bill during the 1960 Session. "With this market nearly saturated, the same promoters of the professional franchise plans will certainly with equal intensity begin soliciting the nonprofessional clubs and groups in the State. One broker, who specializes in the professional franchise plans, has told us that he is working on two nonprofessional association plans now."

He emphasized, moreover, that California's lack of an anti-discrimination statute was a further hazard to those who are presently written by franchise life insurance.⁴

No one present at the hearing could explain why California has no such law on its books. Mr. Groezinger stated that he could recall no effort being made to introduce such a bill in the 20 years he has served in Sacramento. Asked if his clients would favor such a law, he replied that he could not unequivocally say but felt that they would have no objection to it.

Mr. Jeske speculated that the reason why such a law had not been enacted was the absence of the problems that other states have encountered. In any event, he noted that, "In practically every group insurance policy written in * * * California, there is a conversion privilege which authorizes the individuals to a policy of other than term insurance any standard form of contract written by the company issuing the group contract at the standard rate for the individual as of his then attained * * * age."

Assemblyman Cameron asked Mr. Burns if passage of an antidiscrimination law would not serve the purpose of the legislation he was advocating.

MR. BURNS. No, I don't think it would * * *

ASSEMBLYMAN CAMERON. But, in the public interest, what's the real objection here other than the fact * * * that subsequently they might find that they're not insurable. And if we preclude this happening to them by having the conversion clause in there, how is the public jeopardized by this?

MR. WOLLESEN. Well, basically, start with the premise that the insured is in the best possible relationship when he has some personal relation to an agent * * * where there is somebody standing between the company and the buyer * * *. [The individual] would say, "Well, heck, when I get around to buying insurance, I can just do it by joining these different organizations and if you have a clause in there guaranteeing me the right to convert, I can join the organization for three months and then, when I leave the organization, I can convert my policy." * * *. This is not probably a sound way for people to go about buying insurance * * *. We think the insurance man has an important place in protecting the public because of his personal relationship with his client.

MR. BURNS. Well, that comes down to one other point * * * —it's not a sack of wheat. This insurance business is awfully complicated, and when people try to analyze their own insurance policies, and what's available * * *. It's a rather difficult situation.

Mr. Thomas, after proclaiming the Department of Insurance's neutrality, stated that he believed it essential that "there be some definition of this thing." In response to a question, he stated that the department anticipates no problem enforcing the legislation sponsored by CALU. He went on to point out that, under franchise insurance, the individual policy is frequently cancellable on a month's notice and is sold, in any event, only as term insurance. This is in contrast to the usual policy sold individually which is noncancellable.

Assemblyman Rumford asked about the record of franchise plans in California.

MR. THOMAS. So far as the employer-employee [relationship] is concerned, there has been no difficulty, but none of the other types of franchise insurance have run long enough to develop any problems. The thing of going out and writing franchise on associations has only come into existence * * * —some of it was written as much as seven or eight years ago—but none of it has run long enough to see actually how it will come out * * *.

ASSEMBLYMAN RUMFORD. * * *. In other words, we're in an orbit of theory at this point as to what might happen. We're not too sure * * *.

¹An antidiscrimination statute in life insurance provides that two people who are in an identical position according to the criteria employed by actuaries may not be charged different premiums.

MR THOMAS: Well, past history would give you a pretty definite answer

ASSEMBLYMAN RUMFORD Well, what has happened in other states? * * *

MR THOMAS It has usually wound up in difficulties wherever the thing has been used widely. There are a good many states that have no group statutes at all—they allow any kind of grouping—and the results in the thing have never been very satisfactory * * *

Speaking for the State Bar Association, Mr Farley told the committee that his group's insurance is noncancellable, the policy contains "a good, strong conversion provision," and the rates cannot be increased. Although he conceded that the plan hasn't been in effect long enough⁵ to have had much experience, he pointed out that rates had actually been reduced for certain age brackets. "So far, anyway, it looks entirely safe—safe to the company, I think—and I believe it's good for us too because I understand we enjoy rates of about 25 percent less than they would cost us otherwise," Mr Farley commented.

Mr Farley ascribed the lower rates to the fact that selling the insurance is done by the bar itself, premiums are collected by an agent of the bar, and "the mass purchasing power of 7,500 members" has its effect. As to why the California Bar doesn't prefer regular group insurance, he explained: "Group insurance would serve us probably as well as franchise insurance, except for the fact that under present group requirements, you have to start with a very high percentage of your members. That is okay for the employees in a firm because the employer usually pays part of the premium, at least, and he can make it a condition of employment that they get this insurance coverage. But we in associations cannot do that."

Mr Farley referred to the Keogh-Simpson Bill now pending before Congress.⁶ He expressed a desire to see the \$50,000 limitation imposed under the CALU bill be made non-applicable to associations which set up retirement plans under Keogh-Simpson ("because, I understand that probably the amount of insurance which would be available under retirement plans would almost be \$50,000 itself.").

ASSEMBLYMAN CAMERON * * * What would your feeling be if * * * this bill read as the first paragraph does, defining franchise and wholesale insurance and then merely had an anti-discrimination clause and a guaranteed conversion clause?

MR. FARLEY Well, I think that might be a very good piece of legislation to put in a guaranteed conversion clause. As I say, we have it, and I certainly think it's a good thing. Why not write it in the statute?

ASSEMBLYMAN CAMERON Wouldn't that take care of your problem? You're worried about the \$50,000 limit if this other legislation passes in conjunction with retirement. So, if you just drop that out, all you would have would be a definition and an anti-discrimination and a conversion.

MR FARLEY Yes, we certainly don't need any limitation of \$50,000.

Mr Lloyd told the committee that his firm represents 50 life insurance companies and that they were familiar with the business of franchise life. He maintained that the problem of conversion actually does

⁵ The plan has been in operation only since July 1953.

⁶ This bill would enable self-employed persons to build up retirement benefits in a manner analogous to that under the Social Security Act.

not exist. As to the \$50,000 limit, he warned that, rather than a maximum, it becomes a minimum. He also suggested that it would be very difficult to insure staying within the law.⁷ Mr. Lloyd also expressed his belief that the Keogh-Simpson bill would eventually be enacted and suggested that this must be taken into account.

Mr. Lloyd declined to endorse the CALU draft and particularly took exception to the limit on coverage to professional associations: "Under [the provisions of this proposal], the merchants' associations would not be able to purchase wholesale life insurance. Now, what justification is there that a merchant can't and next door could be a drugstore or an attorney that we legally can write?"

Mr. Jeske responded affirmatively when Assemblyman Rees asked him if the CALU draft "is a good draft and would not restrict you unduly and would also protect the policyholders and everybody else."

Mr. Kennedy, speaking for the State and Southern California Dental Associations, asked that two items appear in any legislation on franchise insurance—(1) a limit of at least \$50,000, (2) a guarantee that future members of an association shall have the same rights under policies as those in existence at time of enactment.

Mr. Groezinger stated that his clients were in support of A.B. 2833, but could not announce approval or disapproval of CALU's draft until he had studied it.

Conclusions

The committee believes it would be unfortunate to await the collapse of some wholesale life insurance plan before sound standards and regulations are promulgated. The developments in the field of automobile warranties provide a dramatic lesson of what can happen where there is a lack of reserve requirements and enforcement powers to protect the citizens of California. The bill enacted by the 1959 Legislature would not have affected existing plans, so many of the objections raised against that proposal are groundless.

Moreover, it is altogether clear that enactment of an "anti-discrimination law" in the area of life insurance is long overdue. It is indeed ironic that such a large, industrialized and heterogeneous State as ours should be the only one in the nation without one.

⁷ In the draft bill subsequently submitted to the committee by L. K. Lloyd, Bernhard & Co., no mention was made of a \$50,000 limit and the draft was patterned after the code provisions relating to disability insurance issued by private carriers.

REPORT ON HEALTH INSURANCE

House Resolution No 284 of the 1959 Regular Session read as follows

Resolved by the Assembly of the State of California, That the subject matter of group insurance plans providing medical and hospital insurance coverage and their relation to the costs of hospital services and medical care in the State of California is assigned to the Committee on Rules for further assignment by it to an appropriate Assembly interim committee, which committee is directed to report to the Assembly on such subject matter not later than the fifth calendar day of the 1961 Regular Session of the Legislature

This subject was subsequently assigned to the Committee on Finance and Insurance by the Rules Committee. Assemblyman Ronald Brooks Cameron was requested by Chairman Rees to make a study of the matter and, upon conclusion, report to the full committee¹

At its meeting in Sacramento on December 6, 1960, the committee adopted the following recommendation

Immediately after commencement of the 1961 Regular Session of the Legislature we recommend the creation of a subcommittee of an appropriate committee to continue the study in the entire field of prepaid hospital and medical care with authority for the subcommittee investigation to run concurrently with the 1961 Legislative Session and appropriation by the Rules Committee of sufficient funds for the subcommittee to maintain a full-time legislative consultant and a full-time legislative secretary

¹ The report made to the committee by Assemblyman Cameron is included in the Appendix to this report

APPENDIX

MEDICAL AND HOSPITAL INSURANCE COVERAGE

LETTERS OF TRANSMITTAL

HONORABLE SPEAKER OF THE ASSEMBLY
HONORABLE MEMBERS OF THE ASSEMBLY
*Assembly Chamber, State Capitol
Sacramento, California*

The following report on medical and hospital insurance was submitted by Assemblyman Ronald B. Cameron.

House Resolution No. 284 of the 1959 General Session, which directed an appropriate interim committee to study the subject of group insurance plans providing medical and hospital insurance coverage, was assigned to the Finance and Insurance Committee by the Assembly Rules Committee.

Because this was a technical field which has not been covered in recent years by this committee, it was decided by the chairman to ask Assemblyman Cameron to prepare a report to help the committee in defining its scope in this general area.

Assemblyman Cameron's report was submitted to the committee at its hearing on December 6, 1960. The committee does not approve or disapprove of the report, and it is to be emphasized that this report contains the findings of one member and that this subject has not been covered at public hearings. It was the desire of the committee to have this report in the Appendix of the interim committee's final report. Also, a specific recommendation of the interim committee relating to full-scale public hearings has been printed in the body of the full report.

Sincerely yours,

THOMAS M. REES

November 30, 1960

*To: All Members, Assembly Interim Committee
on Finance and Insurance*

In response to many complaints from constituents regarding the shortcomings of their prepaid hospital and medical insurance coverage, I introduced House Resolution No. 284 on May 26th, 1959, which resolution was passed unanimously by the Assembly on June 18th, 1959. This resolution was referred by the Rules Committee to the Interim Committee on Finance and Insurance, and directed the committee to report to the Legislature by the seventh calendar day of the 1961 Regular Session a report relative to the subject of "... group insurance plans providing medical and hospital insurance coverage and their relations to the costs of hospital services and medical care in the State of California."

The chairman of the Interim Committee, the Honorable Thomas Rees, and I had a number of discussions with regard to the resolution, attempting to develop the most suitable program to answer the mandate of the Legislature to report on this subject matter. These planning sessions pointed out that there was a good deal of sentiment on the part

of the principals in the fields of prepaid hospital and medical care that there was no demonstrated need for a comprehensive study in this field, as pointed out in Finding Number 16 of the attached report. In light of this general feeling, the heavy load of interim committee work placed upon the members of this committee, and the financial limitations placed upon the committee during the 1959 session, the chairman and I agreed that I should proceed to do investigation as required by the resolution, and in the event that I was able to demonstrate a real need for a thorough investigation, we would then take the matter up in detail with the full committee and with the Rules Committee, to determine a course of action.

I made every effort to contact the major parties at interest with regard to the subject matter of the resolution, and in fact held meetings with board members of the California Medical Association, the California Osteopathic Association, the California Hospital Association, the California Osteopathic Hospital Association, Blue Shield, Blue Cross, major insurance companies writing hospital and medical insurance in California, trustees of both negotiated and management health and welfare funds, and hundreds of interested citizens.

I soon found that the subject matter was taking all of my time, and that I was receiving dozens of unsolicited communications each week.

In order to facilitate the handling of all of the information and requests, and to develop a preliminary plan for studying the subject matter, I made arrangements with the University of California, approximately July 15th of 1960, to secure the services of Mr. Ted Ellsworth on a part-time basis. Mr. Ellsworth has an extensive background in this general field, and is currently Administrator of Public Programs, Institute of Industrial Relations, of the University of California at Los Angeles.

During the last four months both Mr. Ellsworth and I have spent substantially all of our time on this project. We have interviewed hundreds of persons, including patients, insureds, doctors, hospital administrators, nurses and other hospital personnel, officials of hospital and medical organizations, labor, management, and consultants in every related field. During this same four months period, I have handled in my office over 2,000 unsolicited letters from persons throughout the State who feel that this investigation represents one of the most important activities of the Legislature.

The attached preliminary report, in my judgment, demonstrates the need for a continued investigation and public hearings into the entire field of prepaid hospital and medical care, and I earnestly solicit your support of the preliminary program as outlined in the attached report.

Very truly yours,

RONALD BROOKS CAMERON

SECTION I

INTRODUCTION and BACKGROUND

The phenomenal growth of health insurance following the impetus given to labor-management funds during World War II and the Korean War because of the wage freeze and other factors has, in itself, been responsible for many of the problems that have been called to my attention. The headlong plunge into a relatively new field by parties with such diverse interests as life insurance companies, labor and management, the medical and hospital community, health service plans, and the consumer, was bound to create a conflict of interests that could only result in chaotic conditions. The lack of planning of any of these parties, a difference of opinion as to the purposes and aims of health insurance programs, and finally the failure of the vendors, and the buyers of health coverage to co-ordinate their programs in any way whatsoever, was bound to cause many of the troubles that have developed.

While this report does not intend to discuss the rapid growth of health insurance in detail, it should be noted that less than one-fourth of the population had health insurance prior to World War II, and that now over two-thirds of the population not only have some type of health insurance program, but that segments of the population are now being reached, and a broader coverage is being offered, than was thought possible even as recently as five years ago.

This new broad coverage, and coverage of heretofore uninsurable groups, along with a growing utilization of services and facilities, has resulted in an increase from 37 percent of the disposable dollar of consumer income going to medical care in 1946 to 53 percent in 1958.

Figures compiled by Governor Brown's Committee on the Study of Medical Aid and Health in California indicate that medical expenditures in 1959 were 111 percent of the 1939 Consumer's Price Index, and hospital expenditures were 329 percent of the 1939 Index.

A survey of the Consumer's Price Index illustrates how medical care costs have risen in comparison to the overall cost of living during this period of health insurance growth.

	1947	1959
All items	95.5	123.7
Medical care	94.9	148.0

The increase in medical care costs during this period was 50 percent greater than for all items. In addition to these increased costs on an overall national basis, hospital and medical costs in California are the highest in the United States, as will be shown by the following figures.

Medical Costs—1958—As Indicated by Medical Economics

	<i>Los Angeles</i>	<i>San Francisco</i>	<i>Average 8 selected cities</i>
General practitioners, office calls.....	\$5 33	\$5 00	\$3.89
General practitioners, house calls.....	8 67	7.83	6.01
Surgeon's fees for			
Appendectomy, excluding anesthesia.....	233 33	208 33	160 36
Tonsillectomy, excluding anesthesia.....	100.00	95.83	99 39
Tooth extraction.....	9 00	9.92	5.89

Costs—1958—As Compiled by Health Information Foundation

	<i>Los Angeles</i>	<i>New York</i>	<i>San Francisco</i>	<i>Scranton</i>
Obstetrics.....	\$175 00	\$166 17	\$163 57	\$78 50
Eyeglasses.....	30.83	15 95	30.92	-----

The difference in hospital costs is even greater when it is considered that in 1958 the average daily cost for hospitalization in all general hospitals in the United States was \$28 17, whereas the average in Los Angeles has been estimated at approximately \$50 00.

The average nation-wide for a three bed ward room in 1958 was \$15 91, Los Angeles was \$21 50, and San Francisco was \$23 12. When we consider further that from 1946-1958 the short term general daily hospital charges rose 258 percent and that the average cost per stay rose 225 percent, the seriousness of the problem can be seen. It is further estimated by authorities in the field that hospital costs in California will continue to increase at the rate of 5 percent to 10 percent per year.

This report does not represent a complete treatise on the rise in hospital and medical costs and their relationship to the increase in prepaid hospital and medical insurance coverage, but **merely attempts** to document briefly the need for investigation and some legislation.

It is not possible at this time to draw any positive conclusions with regard to the causes for the rapid increase in costs in the fields of medical care as illustrated above. Certainly a portion of the increases can be attributed to the general inflation from which the country has been suffering during the past decade, a portion is occasioned by the increased technology during this period, and a portion has been caused by the rapid increase in wage scales in the para-medical field, due to the extremely low base of wages in these fields during the past decade.

It is generally accepted that part of the increase has been because of the patient's ability to pay the increased fees through prepaid hospital and medical insurance. Certainly it is more than coincidental that the sharp increases in these costs parallel exactly the years of development of insurance in the hospital and medical field.

SECTION II**FINDINGS**

1. Both individual and group prepaid hospital and medical insurance policies are being cancelled by some companies, and claims are being denied, for unexplained or highly questionable reasons, resulting in the insureds not having coverage at the time of greatest need.

- 2 There is such an array of choices available, by virtue of combinations of various benefits in both group and individual prepaid hospital and medical care policies, that it is currently impossible for the lay person to evaluate between available plans
- 3 Exclusions of coverage in prepaid hospital and medical care insurance policies are frequently relegated to the fine print and often tend to be misleading
- 4 Insurance law of the State of New York now requires that the purchaser may, at his option, cancel any prepaid medical care policy within the first ten (10) days of receipt of the policy and receive a full premium refund.
- 5 Some individual prepaid hospital and medical care policies sold in California return less than 10 percent in benefits on the premium dollar and some company loss ratios on all policies are less than 25 percent of the premiums earned
- 6 Persons who have had group coverage of prepaid hospital and medical insurance frequently find that upon leaving the group they may not convert to individual coverage, or that the conversion premium is prohibitive, or that the benefits are so reduced as to render the coverage negligible
- 7 A large number of persons are covered by more than one prepaid hospital and medical insurance policy, i.e., both husband and wife covering the entire family through group plans, which in some instances results in a financial gain to the insureds as a result of a claim being paid by more than one company
- 8 Some trustees and welfare fund officials have expressed concern over the failure of the 1959 Legislature to renew the Rees-Doyle Act (a Reporting Act requiring the disclosure of certain financial information in reference to negotiated health and welfare funds)
- 9 Commercial insurance companies are currently regulated to some extent by the Insurance Commissioner of the State of California with regard to their rate and reserve requirements, however, nonprofit plans such as National Health Plan, Pacific Health Plan, the Kaiser Health Plan, and Blue Shield are not subject to the same regulations as their commercial competitors.
- 10 Due to a lack of planning on a regional basis there is currently, in some areas of California, a substantial overbuilding of general hospital beds. Of the medical care dollar, approximately 30 percent is spent for hospital benefits.
11. Currently the only basis for assuring medical care standards in California hospitals is through the voluntary action of each hospital to seek accreditation by the Joint Commission on Accreditation or the American Osteopathic Association accreditation program. Currently, 20.3 percent of the nonprofit hospitals and 79 percent of the proprietary hospitals in California have no supervision of the medical practices in the hospital, either through design, by not seeking accreditation, or because they are ineligible for such accreditation because of size, mixed MD and DO staff, physical limitations, and other contributing causes.

- 12 Financial information with regard to both nonprofit and proprietary hospitals is not currently available, and the information that is available is not in such form that it may be compared hospital by hospital
- 13 Most hospitals in California do not make available to the public a schedule of charges for normal services and goods provided by the hospital, other than the room rate. It is difficult to secure from most hospitals an itemized accounting of a given hospital bill
- 14 Section 1416 of the Health and Safety Code reads as follows "Information and records concerning any licensee or applicant received by the State Department under the provisions of this chapter shall not be disclosed except in a proceeding for the revocation, suspension or denial of an application for a license"
- 15 There are some hospitals in California that are operated by nonprofit corporations where the physical plant is owned by a profit-making organization and leased to the operating company. In some cases the annual net rental for the facility is more than 15 percent of the total cost of construction, land, and equipment. In other cases the lessor company reserves to itself the pharmacy, X-ray, and laboratory facilities and leases only the portions to the operating company which are traditionally operated at a loss
- 16 There is an aura of distrust between the principals in the prepaid hospital and medical insurance field. Organized medicine, which in California represents approximately 75 percent of the practitioners, seems to recognize that most of the problems enumerated in Findings 1 through 15 do exist to some degree, but rejects the position that many of these shortcomings should be resolved by legislation. Their contention is that legislation would lead to a form of government intervention that, in their judgment, would be dilatory to the practice of medicine. The hospitals that belong to the voluntary association seem to concur in the judgment of organized medicine in the main, however, they recognize that immediate steps must be taken to curb many of these abuses. They are making a valiant effort through their associations, but admit that they have no control over the most flagrant violators. As a rule, these are not members of the California Hospital Association. The voluntary association includes only about 55 percent of the hospitals in the State.

Management from the insurance industry recognizes the shortcomings enumerated above, but is loath to move in support of any legislative program for fear of economic retaliation by some insurance companies who would not support the program, and by medical and hospital groups who would condemn the companies that might participate in such a program. Some negotiated labor-management hospital and medical insurance programs are critical of the insurance industry and organized medicine for not supporting a reform program. Other negotiated plans take the position of "why fight city hall."

This lack of rapport between the parties at interest makes it exceedingly difficult to ferret out the real problem areas which are causing an 8 percent per year increase in the cost of medical care while we are experiencing only a 3 percent annual inflation rate.

SECTION III

RECOMMENDATIONS

- 1 Consideration of legislation requiring that all prepaid hospital and medical insurance policies, after the policy has been in force for twenty-four (24) consecutive months, be noncancellable except for nonpayment of premiums, unless the carrier cancels all policies of the same class and type at the same time
- 2 Legislation requiring the Insurance Commission, under the provisions of the Administrative Procedure Act, to establish a system of grading for all prepaid hospital and medical insurance policies, based upon the projected loss ratio of the policy, and requiring that all policies and related promotional material indicate clearly the grade of the policy and an explanation of the grading system
- 3 Legislation requiring that all prepaid hospital and medical insurance policies list all exclusions with the listing of benefits, and that the exclusions be given equal prominence in a type of at least the same size and style as that with which the benefits are listed
- 4 Consideration of legislation requiring that a full premium refund will be paid to the insured if the insured surrenders and requests cancellation of any prepaid hospital or hospital and medical insurance policy during the first ten (10) days after the receipt of said policy
- 5 Consideration of legislation requiring the Insurance Commissioner, under the provision of the Administrative Procedure Act, to establish standards of minimum benefits, based upon loss ratios on policies that are sold in California. The Legislature, after public hearing, should set guide posts for the commissioner to follow
- 6 Legislation requiring that upon leaving group coverage, conversion can be made without evidence of insurability (provided there has been coverage of the insured in the group for twenty-four (24) consecutive months). The converted coverage benefits shall be substantially the same as the group policy with no additional limitations or restrictions, and at a premium substantially the same as the group premium, giving consideration to the additional administrative expense of the carrier
- 7 Consideration of legislation limiting the total benefit on hospital and medical insurance to the total of the economic loss to the insured. Legislation setting a formula for prorating of the liability where there is liability on the part of more than one carrier
- 8 Consideration of legislation reinstating the provisions of the Rees-Doyle Disclosure Act, providing that duplicate copies of the federal disclosure form be filed with the Insurance Commissioner of California
- 9 Legislation giving jurisdiction to the Insurance Commissioner over all groups selling hospital and medical insurance plans, and subjecting all competing organizations to the same requirements, with the exception of the gross premium tax

10. Legislation requiring the State Department of Public Health to set up a master plan of hospitals for each geographic region in the State, with the help of a local planning council composed of physicians, hospital administrators, and the general public. Requirement that prior to the issuance of a license for the expansion of an existing hospital or building of a new hospital, that it shall be in conformity with the master plan. Only after public hearing and after the local planning council has made a recommendation that a variation from the master plan be authorized could a license be issued that is not in conformity with the master plan.
11. Legislation requiring the State Board of Medical Examiners and the State Board of Osteopathic Examiners to establish medical care standards for all hospitals after hearings as provided for in the Administrative Procedure Act. These standards would be supervised by the respective boards and violations of said standards would be reported to the State Department of Public Health. Any violation of such standards would be the occasion for an immediate investigation by the Department of Public Health and would occasion an action by the department for suspension or revocation of the hospital license.
12. Legislation requiring the State Department of Public Health to promulgate a uniform accounting system for all hospitals, similar to that promulgated by the American Hospital Association and the California Hospital Association. It would require that all hospitals adopt this accounting system by a specified date and that each hospital, subsequent to the adoption of the system by the hospital, be required to submit to the department at the end of each fiscal year, on a form provided by the department, such financial, operational, and ownership information as may be required by the department under rules promulgated by the department and as provided for in the Administrative Procedure Act.
13. Legislation requiring that each hospital licensed by the State of California establish its own schedule of charges for all services and goods normally provided by that hospital and that it file a copy of said schedule of charges, on a form provided by the State Department of Public Health, with the department by a specified date. The board of directors of each hospital could at any time amend its schedule of charges and said amended schedule would be effective thirty (30) days after the filing of a copy of the amended schedule with the department.
14. Legislation repealing Section 1416 of the Health and Safety Code.
15. Development of legislation to amend the nonprofit incorporation laws of California to preclude nonprofit operating companies being established to operate hospitals that are proprietary in intent.
16. Immediate creation of a subcommittee of the Finance and Insurance Committee to continue the study in the entire field of prepaid hospital and medical care with authority for the subcommittee investigation to run concurrently with the 1961 Legislative Session and the appropriation by the Rules Committee of sufficient funds for the subcommittee to maintain a full-time legislative consultant and a full-time legislative secretary.

SECTION IV

HEALTH INSURANCE

In reviewing the problems raised with health insurance, I found the main concern with individual policies as follows

- (a) High cost—especially for persons over 50 years of age
- (b) Restricted benefits that fail to meet any substantial part of the hospital or medical bill
- (c) Presence of pre-existing clauses that limit the value of programs to older persons
- (d) Cancellation of policies by the insurance company at a time they are most needed
- (e) Misrepresentation by insurance salesman
- (f) Complexity of policies which make them difficult for the buyer to evaluate.
- (g) Concealment of exclusions and limitations by using small print and involved language which often is buried deep in the policy

Since most of the problems in this field are caused by, or at least are partially due to, high insurance costs the following material extracted from the annual reports of the California Department of Insurance and other sources illustrates graphically the situation. Comparative figures of commercial insurance companies, Blue Cross, and Blue Shield indicate that on an average the expenses charged against the purchaser of insurance, or conversely, the benefits paid, are not substantially different insofar as group insurance is concerned.

The following table based on reports of the Health Insurance Council compares premiums earned to benefits paid

TABLE No. 1
Comparison of Loss Ratios Commercial Insurance Companies,
Blue Cross and Blue Shield
 (Figures in billions of dollars)

Insurance Companies—	1957	1958
Group premiums	\$2,310	\$2,160
Benefits paid	1,806	1,954
Ratio of benefits to premiums	—	93.5%
Individual premiums	1,379	1,484
Individual benefits	589	637
Individual ratio of benefits to premiums	—	48.4%
All policies ratio of benefits to premiums	—	66.7%
Blue Cross—Blue Shield—All Policies *—		
Premiums	1,010	2,141
Benefits	1,852	2,074
Loss ratio	—	97.4%
All Carriers—All Policies—Loss Ratio	—	90.3%

* These figures include group policies, individual direct sales policies, and conversions to individual policies from group policies. Estimates indicate that ratio of benefits to premiums is 94 percent group, 89 percent individual, and over 100 percent on group conversions.

However, the ratio of benefits paid to premium earned varies greatly both as to individual companies and as to type of coverage, as shown in Table II:

TABLE No. II
ALL HEALTH INSURANCE BUSINESS TRANSACTED IN CALIFORNIA
Comparison of Loss Ratios of Commercial Insurance Companies
by Type of Coverage

	1955-58	1958
All business—health insurance.....	75.9%	79.0%
Group	86.4%	90.0%
Accident and health—individual	46.0%	44.9%
Noncancellable—individual	39.0%	40.5%
Hospital and medical—individual	45.0%	45.6%
All individual policy business.....	44.0%	44.6%

The following tables illustrate the wide variation within commercial companies as to the percentage of the premium dollar that is used to pay medical benefits. The group policy columns include all types of health insurance written by the various companies, including noncancellable policies, medical and hospital policies, income replacement policies, etc. The individual policy column includes only specific types of policies as identified in each table. The medical and hospital type of benefit is similar to, but usually not as extensive as, Blue Cross or Blue Shield policies.

TABLE No. III
Comparison of Loss Ratios of Group and Individual Health Insurance
Policies of Commercial Insurance Companies

	1955-58		1958	
	<i>Group (All health insurance) %</i>	<i>Individual (Medical and hospital) %</i>	<i>Group (All health insurance) %</i>	<i>Individual (Medical and hospital) %</i>
American National	70	36.1	133.1	39
Business Men's Assurance	65.8	45	63.2	43.2
Washington National	69.9	43.3	84.7	46.6
Mutual Life (New York)	99.1	-	109.3	24.5

TABLE No. III-A

	1955-58		1958	
	<i>Group (All health insurance) %</i>	<i>Individual (Accident and health) %</i>	<i>Group (All health insurance) %</i>	<i>Individual (Accident and health) %</i>
Firemen's Fund	74.6	34.2	78.2	34.8
American Casualty	70.9	29.3	75	48.7
Continental Casualty	64.4	37.2	61.9	33.3
Ind Ins Co of No. America	53.6	28.1	58.3	12.4

As can be seen from these figures, which include all the business of the carrier and not just that done in California, it is only occasionally that the individual companies will return as much as one-half of the amount in benefits to the individual policyholder as is returned to the group policyholder.

The following tables indicate the loss ratios for various companies that do a substantial California business.

TABLE No. IV
Loss Ratios of Group Health Insurance Policies Only

	1955-58 %	1958 %
Independence Life	69	75.7
West Coast Life	76	80.9
Union Labor Life	84.5	87
Pacific National Life	74.9	77.7

TABLE No. V
Loss Ratios of Individual Medical and Hospital Policies Only

	1955-58 %	1958 %
California Life	37.2	37.7
Pacific Mutual	37.8	42.6
Connecticut General	39.6	42.4
Provident Life and Accident	48.9	53.5
New York Life	39.7	45.5

All of the above figures are taken from statistics compiled for the Governor's committee

While the four-year loss ratio average of all group business transacted in California is 75.9 percent, the range is very wide. At the bottom of the scale Industrial Life shows 5.3 percent, Fidelity Life and Income 14.4 percent, Manhattan Life 21.7 percent, National Casualty 54.8 percent. On the other hand, many of the companies averaged 80-95 percent.

TABLE No. VI
Comparison of Financial Statements of Commercial Insurance Companies by Percentage
Distribution of Premium Dollar for 1958
Hospital and Medical Individual Policies Only *

Exhibit "A"

	<i>Estimated premium</i>	<i>Percent paid in benefits</i>	<i>Commission percentage</i>	<i>Percentage of total expenses including commissions</i>	<i>Dividends and gain for all health insurance business †</i>	
					<i>Dividends</i>	<i>Net gain</i>
Monarch Life -----	\$2,754,557 37	44 5%	38.9%	65 5%	3 3%	5%
Westland Life -----	3,318,701 81	41 5	44.1	57 6	Nil	0 3
Beneficial Standard ----	12,587,559 74	42 4	16 3	47.9	1	9
Constitution Life -----	8,520,000 00	50	23	40 2	0.13	4 3

* The estimated operating expense factor for Blue Cross in 1957, for similar types of policies, was 5.3 percent in Northern California, 6.5 percent in Southern California.

† These figures are for all group and individual health insurance policies, and not a percentage of the estimated premium shown on this table.

NOTE: The percentages in this table will not always equal 100 percent, as dividends and profits are not now available for this type coverage in every case. In some cases, there may be a loss which is wholly or partially offset by investment income, or, as in the case of Constitution, the net gain for this type of policy was only 8 percent.

SOURCE: Annual financial statements—California State Department of Insurance for business done in entire United States.

SECTION V

INDIVIDUAL HEALTH INSURANCE

As far as individual policies are concerned, for all business written in the United States some companies show a four-year average of less than 25 percent. For hospital and medical policies some loss ratios were. Security Life and Accident 28.2 percent, North American Life 26.4 percent, Central Standard 29.8 percent, Indemnity Insurance Company of America 6.8 percent.

For accident and health, the figures were: Hearststone 19.6 percent, Indemnity Insurance 23.1 percent, Protective Security 16.9 percent, Federal Life and Casualty 13 percent, Stuyvesant Life 3.5 percent.

For noncancellable, Continental Assurance showed 23.6 percent, National Life and Accident 16.7 percent, Union Mutual 18.2 percent, Massachusetts Casualty 12.4 percent, John Hancock 15.9 percent.

The amount of business transacted in California for these coverages was not secured.

1. Noncancellable Policies

With such a small amount of the premium dollar going to the policyholder in the way of benefits, the eventual result has been misrepresentation of policies, cancellations when coverage is most needed, overselling, refusal of coverage to many persons, and limitations and restrictions through health statements and pre-existing condition clauses that are usually misunderstood.

Complaints were received from persons who said that after holding a policy for many years, when suddenly taken sick they were quickly notified that the policy would be canceled on the next renewal date (the first of the following month).

I feel that only by legislation can these problems of high cost and misrepresentation be corrected. If a company is required to write only noncancellable types of health insurance, it is hoped that many of the misrepresentations made in the past will be eliminated. Therefore, an amendment to the Insurance Code is proposed. A summary of the proposed amendment follows:

Amendment to Sections 10350, 10350.2, and 10350.3, add Section 10350.13, and repeal Section 10369.9 of the Insurance Code:

- a. All disability policies shall contain a provision that the insurer may not cancel the policy except for nonpayment of premiums, and that he cannot reserve the right to refuse renewal, providing that the policy has been in force for two years or more.
- b. No renewal will be at increased premium rate unless premiums for all policies of the same class are increased.

Similar legislation has been adopted in New York.

2. Classification of Insurance Policies

One of the most frequent complaints that has been made by individual buyers of health insurance is that the policies and brochures of the insurance companies are so complex that the ordinary layman cannot evaluate one against the other. As a matter of fact, the high-pressure salesmen who sell many of these policies cannot themselves evaluate

them. A typical complaint is that the policyholder finds out for the first time of the conditions that are excluded when he files a claim.

One of the most flagrant cases involved a 69-year-old woman who had had a policy since 1956. In 1958 she was approached by a salesman for Westland Life Insurance Company who convinced her after a long sales talk that she should drop a policy of Constitution Life Insurance Company and take Westland which he alleged was much better and only slightly more expensive. In 1960 she was operated on for a hernia and her claim was refused on the ground that the condition had existed prior to taking out the policy. In reviewing this complaint, it was found that the policy was only slightly better and that the premium was much higher, but more important, her Constitution policy would have covered the operation and paid a total of about \$400. Although a complaint has been filed with the Insurance Commissioner by her own doctor, who states that the condition was not pre-existing, the claim has not been paid.

This problem became of such great concern to the Governor's Committee that it has recommended gradation of policies. Its members generally agreed that the ratio of benefits to premiums paid and that the many misrepresentations that are being made in selling individual health insurance policies called for some type of legislation. It was felt that a classification or gradation of policies would be most effective, and study of methods of achieving this end are now under way.

In my own investigation I have come to the same conclusion as did the other members of the Governor's Committee. When the many different types of policies with their complicated restrictions and limitations, varying benefits, deductibles and co-insurance provisions, sliding scale for premiums by age of the buyer, noncancellable provisions, catastrophic coverage, technical language, and fine print, all complicated in some cases by high-pressure salesmen without a background in the health field and too often without any conscience whatsoever, the plight of the uninformed, indeed even of the informed, buyer becomes apparent.

Table No. VI highlights some of the causes of this problem. When it is considered that in some cases the share of the premium dollar which goes toward benefit payments is less than the salesman's commission, and that in most cases it is less than operating expenses, it is no wonder that there is widespread dissatisfaction with individual insurance policies.

The companies selected for this comparison are ones that have a substantial volume of business in California and against whom many of the complaints have been charged.

Table No. VI is attached hereto and marked Exhibit "A."

Two approaches to this problem are possible:

- (1) Grading of policies by classifications "A," "B," "C," etc., in relation to the benefits paid, and
- (2) Grading by the ratio of benefits paid to premiums earned.

The complexities of health insurance and the varying needs of different segments and groups of the population make it appear impractical to grade by benefit structure, and therefore I am recommending legislation based on the ratio of benefits paid to premiums earned.

The general recommendation will be that policies will be graded "A" if the company has paid in the previous year, or averaged over a five-year period, 75 percent claims ratio, "B" if between 65 and 75 percent, "C" if between 50 and 65 percent, and "D" if below 50 percent. For new companies a projected expense and commission schedule would have to be considered in grading the policies.

3. Clear Statement of Policy Restrictions

Since exclusions are usually delegated to a back page of insurance policies, it is suggested that all sales brochures, certificates, and policies list all exclusions with the listing of benefits, and that they be given equal prominence, in type of at least the same size and style as that with which benefits are listed. It is further recommended that exclusions be listed on the same page, and immediately following the benefit provisions.

4. Free Examination Period for Policyholder

It is now necessary in New York to give a person ten days after delivery of a policy to read and understand it. During this period he may cancel and secure a premium refund. One local insurance agent, Newell Larson of Torrance, California, advises that he uses this procedure in selling for the Provident Life and Accident Insurance Company. With the delivery of each policy, a letter is sent to the policyholder stating as follows:

"Please take the time to read the policy and to understand what it will do when the need arises. Should there be any misunderstanding about the policy, or should you not be entirely satisfied with it, return the policy to us within 10 days of its receipt, and the premium you have paid will be cheerfully refunded."

Expressions received at a recent meeting of the Harbor Branch of the Insurance Underwriters' Association indicated that most of the agents felt that this requirement, as well as other items discussed in this part of this report, would help to solve the problem of misrepresentation and high-pressure salesmanship, as well as help to lessen the misunderstanding which is inherent in the sales of health insurance policies.

5. Establishment of Minimum Benefits Provisions

In order to avoid sales of policies which do not effectively provide any insurance, it has also been proposed that minimum benefit standards be set up by the Department of Insurance. Such a program has been in effect in California, but the minimums set are so low that they are not effective. For example, the minimum benefit that can be provided for a hospital room is \$3 per day, whereas the charges for a three-bed ward room in both San Francisco and Los Angeles now averages well above \$21 per day. At the same time, there appears to be no enforcement even of these minimal requirements.

It has been proposed that no policy could be written by any company unless at least 75 percent of the premium dollar goes into providing benefits.

Any of these proposals would tend to drive some of the marginal companies out of business, and to restrict the activities of the high-pressure salesman who will only sell if his potential earnings are high.

SECTION VI

GROUP HEALTH INSURANCE

Although it is true that most of the complaints which I received were regarding individual policies, many problems concerning group health insurance exist, and if the parties themselves do not solve them, they will soon become a matter of great concern.

The most frequent complaint of the group buyers was in regard to the continual rising cost of health insurance programs. There was little or no indication that insurance company costs play an important role in this respect. Except for the very small group buyers and the professional associations, insurance company expenses charged to the group account have varied between 4 percent and 10 percent of premium, and indeed insurance company spokesmen have complained that many companies have lost money on their group program operation in the past year. It must be pointed out, however, that when earnings from investments through use of the group buyers' money is taken into consideration, few losses have occurred.

Hundreds of reports filed under the Rees-Doyle disclosure provisions have been examined, and few would merit any real criticism of either the insurance carrier and its agents, or of the trustees of the funds.

Only one glaring case, concerning the Metropolitan Casualty Company (now out of the group health insurance field) and the Los Angeles Hotel and Restaurant Owners and Culinary Workers Fund, was noted. In this case, a 15 percent commission was paid to a broker in 1958, resulting in a payment of about \$49,000 on a premium of slightly over \$300,000. The usual commission on this type of case would be from 1 percent to 3 percent, probably not in excess of \$5,000. In this instance the Trustees of the Fund disclaimed any responsibility through a letter to the Insurance Commissioner, pointing out that they knew nothing of this agreement, and that it had resulted only in loss for the company since the benefits paid had exceeded premiums earned.

Many complaints were received concerning unnecessary utilization of health programs, unnecessary medical care, hospitalization and surgery and the high cost of hospitalization. A few cases of fraud were indicated.

General complaints received have to do with unnecessary increases in insurance costs because of greater utilization, and higher charges for the insured population. The extent to which these conditions exist is disputed by the parties. That they do exist is not argued by any informed people as the following will show:

(a) The Administrator of the Motion Picture Health and Welfare Fund in 1956 issued a report indicating that by increasing benefits for the administration of anesthesia by 25 percent, its insured members realized only an 11 percent gain because of increased doctor's fees.

(b) The Health Insurance Council, in a survey for 1955, found the cost of medical care for a family to be \$145 per year of insured, \$62 if not insured.

(e) Increases because of major medical programs are quoted from many sides. The Medical Claims Bureau of Los Angeles reported charges of \$1,000 for a hernia, \$800 for a hysterectomy, \$150 for a cystoscopy. Dr. Robert Kimbro, in *Medical Economics*, reported charges of \$1,800 for removal of an eye, \$1,000 for a thyroidectomy, and estimated that under major medical insurance, doctor's charges were 20 percent-25 percent higher than private patient fees. The *Wall Street Journal* reported Robert E. Ryan of Royal Liverpool Insurance Group, one of the early leaders in the major medical field, as saying, "The hypochondriacs really stung us."

(d) The Health Information Foundation, in a 1958 study, found utilization much higher among the insured as shown in Table No. VII.

TABLE No. VII
Comparison of Hospitalization for Insured and Uninsureds

	<i>Insured</i>	<i>Uninsured</i>
Percent of patients hospitalized each year	14%	9%
Average number of days in hospital each year	1	0.7
Percent of hospitalized patients that had surgery	9%	5%
Rate of appendectomies per 1,000 persons	11	5

(e) A survey by the Maryland State Medical Society among its own doctors showed the following:

TABLE No. VIII

Percent of doctors who believed that there were hospital admissions for the convenience of the doctor	58%
Percent who thought there were admissions for convenience of the patient	58%
Percent who thought there were prolonged or unnecessary hospitalizations because of insurance	61%
Percent who thought hospitals are used uneconomically	77%

(f) Some cases of fraud have been uncovered. Walter Ogden, M.D., of North Hollywood, California, has just been convicted of filing fraudulent claims against insurance companies. The Hollywood Citizen-News of November 15, 1960, reported that he had been convicted of three counts of violation of the insurance code, two of grand theft.

The *Saturday Evening Post* recently, in an exposure series, told of a company that decided to stop sending checks to the doctors but to send them instead to the patients. Shortly after sending an insured person a check for \$200 for an appendectomy, it was returned with a note explaining that a small mole had been removed—not an appendix. In Los Angeles, some years ago, headlines told of the story of some 200 doctors who had defrauded their own health plan, Blue Shield, by filing claims for work never done. In a survey made for the San Francisco Labor Council in 1954, E. Richard Weinerman, M.D., of El Cerrito, California, estimated that 50 percent of the premium dollar went for expenses or unnecessary services.

(g) Jerome Pollack, program consultant for the Social Security Department of the United Auto Workers, AFL-CIO, in 1956 reported that a study of a UAW program in which benefits were raised 26 percent yielded only a 9 percent gain to the worker because of increased medical fees.

(h) A study by the Michigan State Medical Society in 1958 revealed the following:

TABLE No. IX
Prolonged or Unnecessary Hospital Stays

Persons without any insurance.....	14%
Persons with commercial insurance (limited coverage).....	30%
Persons with Blue Cross (comprehensive coverage).....	36%

(i) A comparison of hospitalization under an insured Blue Shield plan, and the comprehensive Health Insurance Plan of Greater New York, illustrates reduced hospitalization where diagnosis and outpatient medical treatment are part of the program

	<i>Blue Shield</i>	<i>H I P</i>
Number surveyed	53,000	57,000
Annual hospital admission rate per 1,000	98.5	77.4

Despite some rather gloomy reports concerning the effects of group health insurance on medical costs, only minor legislation seems necessary in this field

6. Mandatory Conversion

Since one of the most serious complaints concerning group policies is that they are often lost during times of disability and unemployment, just at a time when they are most needed, legislation is proposed in this respect

Much discussion has been held indicating that there is a need for a return to "community rating" of insurance risks, instead of individual and group "experience" rating. I do not believe that this is feasible, or possible, at this time; however, a mandatory conversion program is feasible and would help alleviate this problem somewhat

The State of New York passed such legislation in 1959, and despite some insurance company protests, it has not upset insurance company practices, as had been predicted

While some companies offer a conversion program from group to an individual policy, they usually are drastically reduced in benefits, and increased in cost. Blue Cross and Blue Shield offer conversion programs in the hospital field which are substantially the same as many of their group policies

SUMMARY OF RECOMMENDED LEGISLATION

I Amendment to Section 10270.6 of the Insurance Code:

- a Group policy shall contain a provision that if an individual's group insurance protection is terminated for any reason whatsoever, and if he has been insured for 24 months he shall be entitled to have issued to him an individual insurance policy
- b He shall not have to furnish evidence of insurability for either himself or his dependents
- c There shall be no increase in premium, and the policy shall be noncancellable and right of renewal shall only be exercised for nonpayment of premium
- d Benefits shall be substantially similar to those under the group policy
- e The individual policy shall not exclude any conditions not excluded under the group policy
- f The effective date shall be the date of termination under the group policy

7. Multiple Coverage

One of the abuses of our health programs which leads to increased costs is that of multiple coverage. Doctors, hospital administrators, welfare fund administrators, and insurance agents cite many examples of prolonged or unnecessary treatment and hospitalization because of the profit that can be made by over-insurance.

One instance was cited in which a person insured under a group health insurance program realized over \$2,400 in one year from hospital benefit payments, even though under another group program, Kaiser Health Plan, she had no hospital bill whatsoever to pay.

New York permits cancellation of a policy, in the public interest, where over-insurance exists, and where the policyholder has been notified in writing that he has exceeded the standards of insurance as determined by the State. Many companies are now beginning to write "duplication" clauses, and many group buyers are aware of the evils of this type of insurance. Many are, for example, reducing hospital room payments for those persons who receive Unemployment Compensation Disability benefits of \$12 per day.

8 Restoring of Rees-Doyle Legislation

Another problem of group policyholders is that of having available to them information concerning the operations of other policyholders and insurance companies. Trustees are often unaware as to what administrative costs, expenses and commissions of insurance companies, and other operational costs are reasonable and customary.

In this connection, some trustees and welfare fund officials regret the failure to continue the disclosures and filings under the Rees-Doyle Act. Although few discrepancies were found, many felt that the information made available concerning insurance company practices and the experiences of other funds was of value.

The excessive commission paid by Metropolitan Casualty Company, in the case mentioned earlier in this report, was revealed to the trustees of the fund only when the insurance company filing was made necessary by the Rees-Doyle provisions. There can be little doubt that the spotlight put on companies and brokers prevented other such unreasonable charges.

Although similar information is on file in Washington, the expense of securing it when needed is almost insurmountable, except in the most serious cases. Several other funds, for example, found out for the first time that there were arrangements between the companies and agents and brokers, about which they had not known. The suggestion has been advanced that a duplicate copy of the federal reports be filed with the State Department of Insurance.

Conclusion

Although the costs of health insurance have increased greatly, and although the complaints regarding unnecessary expenses and overutilization of insurance programs are widespread, I believe that the minimal legislation proposed can be effective, if it is accompanied by some regulation of professional services, as well as by continued self-policing by the carriers, welfare funds, doctors, and hospitals, all of which is taking place in varying degrees in some areas of the State, and by development of a program designed to educate the buying public as to the purposes of health insurance.

SECTION VII

NONPROFIT HEALTH PLANS

9. Regulation of Nonprofit Health Plans

The East Bay Welfare Council, AFL-CIO, the Marin and Santa Barbara Labor Councils, and others have passed in recent months, resolutions calling for state regulation of nonprofit welfare plans. These include Kaiser, National Health Plan, Pacific Health Plan, and others. The resolutions point out that there is no rate regulation of these plans. It reads as follows:

WHEREAS, Hospital Service of California (Blue Cross), California Physicians Service (C P S), and the Kaiser Foundation are allegedly nonprofit organizations operating for the public good in providing hospital service plans, and

WHEREAS, Blue Cross, C P S and the Kaiser Foundation have recently increased premium rates from 20 to 30 percent within the State of California, and

WHEREAS, This action raises a serious question as to the so-called nonprofit operation of these hospital service plans, and

Now, therefore, be it resolved: That the California State Federation of Labor introduce a bill at the next session of the State Legislature providing that no nonprofit hospital service plan shall enter into any contract with a subscriber unless and until it shall have filed with the California Department of Insurance a full schedule of rates to be paid by the subscribers to such contracts and shall have obtained the department's approval thereof. The department may refuse such approval if it finds that such rates are excessive, inadequate, or unfairly discriminatory.

Complaints have come to this committee which indicate that there is also a certain amount of misrepresentation, and in some cases, doubt as to whether or not some of the health plans can deliver what they promise. In 1959, the National Health Plan in Los Angeles contracted for hospitalization for a consumer group, but had no way of delivering such services. If there is dissatisfaction or a complaint concerning such a health plan policy; there does not exist any agency that has power to act and the buyer's only recourse is through legal action.

The creation of regulatory measures under the direction of the Insurance Department or the creation of a new Health Insurance-Health Plan Department has been suggested.

SECTION VIII

MEDICAL AND HOSPITAL COSTS

A more serious problem faces the State in regard to hospital and medical services, not only because of the unnecessary increase in the cost of medical care, but also because of a possible deterioration in some areas, and undermining of the confidence of the public, both in regard to health insurance programs and in regard to our medical practitioners and hospitals.

A great deal of publicity has been given to these problems in both the lay and public press, and response by dissatisfied patients after each

exposé is always so tremendous that I can only conclude that unrest regarding our medical system is widespread

The extent of popular reading matter in this respect indicates the extent of, and contributes to, this unrest. At least four best sellers, which certainly lead to doubt concerning our entire medical system by the public, are Seymour Kern's "The Internes" and "The Golden Scalpel," Richard Carter's "The Doctor Business," and "It's Cheaper to Die" by William Michelfelder.

Newspaper stories have many filled columns. The famous Blum report has created public doubt as to the integrity of our hospitals. This study, made by Richard Blum, Ph.D., Stanford University, for the California Medical Association in 1958, was a study of the practices of 10 large hospitals. Very little has been released. However, the story of two surgeons having a fist fight over a patient on the operating table until one was floored, the story of the dying patient who was refused admission because a doctor did not like his Health Plan (supposedly Kaiser), and others of similar nature, caused James E. Smits, President of the Hospital Council of Southern California, to be quoted by the *Los Angeles Times*, on August 28, 1958, as follows: "I see no reason why the survey should be an indictment of the hospitals, as we have no control over the doctors." This has caused many in the field, and many patients, to wonder who does have control over the activities of doctors in the hospitals, if the hospitals themselves do not.

A 1959 series in the *Los Angeles Mirror News* stated that many doctors who charge \$5 for an office visit raise their charge to \$8 if the patient has insurance. It further stated that some doctors interviewed recognized these problems, and stated that organized medicine unwisely was always against any controls. It told of hospitals where the patient who enters with a broken toe may get a G.I. series, chest X-ray, urinalysis, EKG, or other unnecessary tests.

The *Los Angeles Mirror News* on October 13, 1959, quoted Leon Desimone, M.D., President of the Academy of General Practice in California, as stating, in response to this story, that the medical societies do what they can but that the 5 percent of the doctors who consistently pad bills are not members of any society. Again, I question how controls can be effective as long as the voluntary method admittedly cannot touch the worst offenders and the control of this minority group, whatever size it may be, is essential for the health and safety of the unwary public.

A series of stories, such as one about an award of \$185,000 against Jack Magut, M.D., of the Beverly Hills Doctor's Hospital in a malpractice suit in which nonlicensed physicians were involved, further indicate the extent of the problem. It was charged in this case that unlicensed doctors were administering anesthesia at the hospital. As a result, the license of Dr. Magut to practice medicine was revoked in 1959, but this action has since been stayed by court action.

The revelation that a promoter convicted of a felony was involved as the owner of the Anaheim Memorial Hospital drew public attention there to our hospital licensing weakness. He later withdrew because of newspaper publicity which forced resignation of the medical staff. The *Anaheim Bulletin* of Friday, September 27, 1957, in writing of the resignation of the entire staff of 61 doctors said:

"Although the physicians did not reveal the exact reason for their action, a check revealed that a prior criminal record of one of the members of the National Purchase Lease-Back firm may have prompted their action "

A lawsuit was filed in 1957 in Los Angeles against the board of directors of a Los Angeles hospital by a doctor who alleged that he was removed from the staff because he did not bring his "quota" of patients to the hospital

Finally, the revelations of abortions, overcharging, and fraudulent insurance claims at Pacific View Hospital in Hermosa Beach, and the indictment of four doctors by the Los Angeles County Grand Jury, all tend to shake the confidence of the public

These are just a few of the many stories that have been featured in the *Los Angeles* and *San Francisco Examiner*, the *San Francisco Chronicle*, *Time*, *Newsweek*, *Life*, *Look*, and other publications Less sensational, but perhaps more frightening, are the stories that appear regularly in the professional journals, a few of which follow

(a) Rollin Waterson, a medical economist for the C M A , stated at a union conference in San Francisco several years ago "The more insurance coverage you buy, the more utilization you have, the more X-rays are taken, the more lab work is done You say it has to stop and I agree with you "

(b) Lucius M Johnson, M D referring in *Medical Economics* to a medical audit done in one of our better hospitals, said that 5 percent of the surgeons were doing work for which they were not qualified, and that another 5 percent were "scalpel happy "

(c) Paul R Hawley, M D, Director of the American College of Surgeons, was quoted by *Medical Economics* on July 6, 1959, as saying that 50 percent of our surgery is done by untrained surgeons and further that our health plans do nothing about quality of care The *New York Times* further quoted him as saying "Inadequately trained doctors were doing an increasing amount of surgery because every insured patient was a paying patient "

(d) The *Journal* of the American Medical Association of March 29, 1952, carried an article by Edward H Daseler, M D , which stated

"It is obvious to me, after practicing surgery in the Southwest for two years, that huge numbers of perfectly normal, undiseased inflamed organs, e g appendices, uteri, fallopian tubes, ovaries, and even gall bladders are being removed for one reason only extirpation of the customary fee from the pocketbook of the unwary patient or his relatives "

With the growth of insurance coverage, and more money being available, these conditions have become worse and apparently will not be controlled until stricter hospital practices are enforced

(e) An official report of the Medical Services Committee of the Los Angeles County Medical Association, in 1959, stated -

"With the creation of these funds to provide a degree of protection against medical indigency, there developed in some physicians a subversion of motives wherein the welfare of the patient becomes secondary to the financial welfare of the physician Our com-

mittee has so far received records which reveal the most flagrant abuses, overcharging, overuse, and fraudulent practices, but too often have felt frustrated in making adequate disposition of these cases due to lack of policy as formulated and approved by the council of this society."

Unfortunately, in Los Angeles there apparently still does not exist any effective policy. Indeed many insurance carriers and welfare fund officials consider it a needless waste of time to file a complaint with the Los Angeles County Medical Association regarding a complaint against any of its members. That this is also the experience of the general public is borne out by complaints from individuals which I have received, indicating that no attention has been paid to their protestations.

However, this is not the case in many areas of the State. In San Joaquin County and some 12 other counties, as well as in Long Beach, effective committees have been set up to review medical claims and complaints. The same is true insofar as the osteopathic, pediatric and optometric professions are concerned. Therefore, I believe that the Legislature should concern itself primarily with hospitals where the worst abuses occur, where cost variations have been most pronounced, and where doctors could be controlled through various hospital committees.

10. Regional Planning

The Governor's committee, his Advisory Hospital Council, and my own investigations all indicate that a lack of planning has resulted in too many beds in certain areas, and to installation of expensive equipment, which has inevitably led to abuse and high costs. Estimates of the cost to the public for this failure are admittedly guesswork, but one study in Michigan indicated that \$5,000,000 a year is wasted in that state because of uneconomical hospitalization.

Ray Everett Brown, director of the Chicago clinics and hospital, and a past president of the American Hospital Association, estimates that an unoccupied bed costs about 80 percent of the amount that it costs to maintain an occupied bed. He further estimates that more bed-days were lost in 1958 because of nonoccupancy than were paid for by all Blue Cross plans. Mr. Brown advocates franchising of hospitals and stricter licensing through governmental action. Mr. Brown is not alone in his support and recognition of the need for tighter hospital controls in order to stop the upward spiral of hospital costs. Even those who do not agree as to method do agree that more effective control is necessary.

Annually a survey is carried out in co-ordinated action by the California Hospital Association, local hospital councils, and the State Department of Public Health. Policies and planning criteria are revised each year by the Advisory Hospital Council. These criteria are used by the Department of Public Health in allocating state and federal funds. The state plan adopted for both the Los Angeles-Orange County and San Diego metropolitan areas pointed out that no hospitals of less than 150 beds should be built in either area. However, despite this, 90 general hospitals were built in Los Angeles from 1950-59 and all but 17 were under 150 beds. In San Diego, seven or eight new hospitals are

being planned, or are under construction. All are said to be under 70 beds. The advisory council's projection to 1975 for Los Angeles is that 160 new hospitals will be built, with all but 14 being under 100 beds.

It is apparent that there is a wide gap between voluntary public planning and the actuality of construction and operation of hospitals. Mr. Mark Berke, Director of the Mt. Zion Hospital and Medical Center in San Francisco, in a speech before the Western Association of Hospitals in 1958, pointed out the need for planning, although he hopes that it can be done on a voluntary basis.

"We are rapidly approaching a time when it will no longer be economically feasible for each hospital to be an independent, self-sufficient enterprise, purchasing equipment for its own use without regards to the needs of the community."

"In San Francisco, five hospitals are approved for open heart surgery, and others are planning to install this expensive equipment, even though three such installations would be sufficient. There are six electroencephalographs, although only one or two are fully used. Several hospitals are considering installing cobalt bomb units at a cost of \$60,000 each, although only one is needed."

"The planning of facilities on a co-ordinated basis is one of the most fertile areas for reduction of costs, but unfortunately it is one of the most difficult to achieve, involving as it does the autonomy of individual boards of directors, medical staffs, and hospital administrations, each with its vested interests, its own philosophy, and its own desires."

"We must be prepared to consider objectively approaches to our problems which may involve the surrendering of some of our individual prerogatives, in order to insure the continuation of the whole."

I am in agreement with Mr. Berke's views. However, as far back as 1926, when the Hamilton Report, which dealt with the Los Angeles area, was issued, the importance of hospital planning was stressed. It did not work on a voluntary basis then for the very reasons stressed by Mr. Berke. I do not believe that it will work on a voluntary basis now, in view of the projections made by the Advisory Hospital Council, and the actual building that is now under way.

I have recognized and applauded the attempts of the California Hospital Association to improve the situation, but I do not believe that exposure will stop those who are promoters, or those doctors who need a hospital as a base of operations. Indeed, exposure alone may create an air of martyrdom which will prevent any real action against certain hospitals.

The combination of profit-making hospitals, unethical doctors, lack of planning, lack of standards, a shortage of accredited hospitals, and an oversupply of small hospitals, have all combined to make Los Angeles, and California, the highest-cost hospital area in the United States. The legislation that I have proposed is similar to recommendations which have been made by the Governor's Committee on the Study

of Medical Aid and Health, and to legislation which will probably be introduced by the California Hospital Association.

The basic difference in approach, however, is that the C H A will probably support permissive legislation which calls for regional planning and public hearings, but with no power to enforce or regulate. It is based on the theory that exposure will accomplish the same results as mandatory legislation. However, C H A may not recommend total exposure, and the necessity of filing annual financial statements and pricing schedules may not be called for. *It is my belief that exposure of hospital records, protecting, of course, the privacy of patient records, is necessary and will help to avert rate regulation which the C H A. believes will be detrimental.*

While the C H A. will probably oppose legislation with teeth in it, there are many hospital administrators and leaders who feel otherwise. In California, many hospital administrators have agreed that there is need for legislation such as I am proposing, but they cannot publicly support it because of the position of the C H A.

On the other hand, at a convention of the California Osteopathic Hospital Association at Santa Monica in October of this year, open support was given to this legislation. The type of legislation that I recommend is not original with me nor is it as undesired by all hospital people as might appear to be the case.

I have already mentioned that Ray Everett Brown, a recent past president of the American Hospital Association, and highly respected in his field, has long recommended the franchising of hospitals in order to reduce costs by better hospital planning. In response to a letter I wrote him regarding this proposed legislation, he stated that he believes that the controls relating to construction and expansion of hospitals in California are necessary and that full public disclosure is, of course, a good thing.

Another well-known leader who is not fearful of hospital regulation is William J. McWilliams, an attorney, and president of Arundel General Hospital in Annapolis, Maryland. "Trustee," the Journal for Hospital Governing Boards, printed a speech he delivered early this year during National Hospital Week. In it, he proposed a program that included:

"The regulation of hospital rates by the Public Service Commission. In time the commission would develop uniform accounting procedures, etc.

"The co-ordination and control of expansion and new construction by the Hospital Council of Maryland. We must be sure that there are not too many hospitals, that they are not larger or more costly than they need be, that there is no wasteful duplication of services, and that all building programs have economic justification. . . . It should have the power to veto any building program of which it does not approve."

Complete disregard for the community desires and needs is illustrated in the case of the Martin Luther Hospital in Anaheim, California. Despite protests from some segments of the community, in

which there are now many unoccupied beds (hospitals in the area are running 60 percent to 70 percent occupancy), the investors went ahead with the building. A nonprofit corporation which will pay excessive rent, approximately \$500,000 a year, to the investors has been established by two small Lutheran churches in the area. I am keeping in touch with this situation, as it is rumored that there may be a fund raising drive in the community, and any such effort will be opposed by community leaders with whom I have met.

An even more flagrant case, illustrating the failure of the voluntary exposure approach involves the town of Ojai, where a hospital district was proposed, and before financing could be secured a doctor from Los Angeles, Frederick Gruneck, moved in and announced plans to build a 25-bed hospital. This, of course, would have ended any chance of obtaining governmental funds for construction of the district hospital.

The mayor and other officials, as well as a majority of the doctors, were opposed to the proprietary hospital.

Ads were taken in the *Ojai Valley News* in September, 1958, by a citizens committee, which asked "Do we want a district nonprofit hospital or one like Northridge?" They then went on to reveal the profits made by Dr. Gruneck out of the operation and sale of the Northridge Hospital in the San Fernando Valley.

Two town meetings were held. At the second one, Mr. Charles Abbott, Executive Director of Blue Cross, spoke and quoted Gordon Cumming, Chief of the Bureau of Hospitals, as being opposed to the building of a hospital in Ojai at the time. The *Ojai Valley News* of Thursday, December 11, 1958, said in relation to Abbott's talk with Cumming.

"Cumming said that . . . residents should not consider building a hospital until the area could afford at least a 50-bed hospital, as an institution must be at least that size to afford the expensive equipment used in modern medical research."

It went on to say

"Abbott said 'generally speaking, our experience is far better with nonprofit hospitals.' He said his office deals with 115 nonprofit and 135 proprietary hospitals in California."

On the same program, Louis Quinn, Managing Director of the California Forward Fund, and Henry Niebauer, a member of the Board of Directors of the California Hospital, both spoke in favor of nonprofit operations.

Despite the obvious desire of the townspeople to develop their district nonprofit hospital, it was only a short while after this meeting that the wishes of the townspeople were ignored, and Dr. Frederick Gruneck, owner of two highly profitable proprietary hospitals in Los Angeles, began construction of a hospital. Even though every form of exposure was used, including help from Blue Cross, the Chief of the Bureau of Hospitals, and other well-known people in the field, the efforts failed as there was no way in which the hospital building could be stopped.

A summary of the portion of a recommended bill dealing with regional hospital planning is as follows:

AMENDMENT TO HEALTH AND SAFETY CODE

- 431 2 Advisory council of eight appointed by Governor Also a director of Hospital Advisory Council Representatives of groups, state agencies, and consumers with knowledge of hospitals
- 431 5 Health department may establish hospital regions after consultation with advisory council
- 431 6 Department shall appoint regional councils Director and 12 Three physicians, three hospital administrators, six labor, prepayment plans, and industry
- 431 7 Regional councils shall develop regional plan for hospital expansion in consultation with health department In doing so, shall review utilization, develop standards of community need, and conduct public meetings
- 431 8 The department shall develop and bring up to date annually regional plans
- 431 9 If advised by department that a proposed new hospital or expansion is in conflict with regional plans, the regional council shall conduct public hearings

SECTION 1 1402 Applicants must file information concerning ownership, type of facility, and must be of reputable character, and must present evidence of ability to comply with the regulations of the department

(h) Must present evidence of need for facility.

(i) Must file change of ownership information

1402 1 Department shall determine if hospital is in compliance with regional plan May not issue license if in conflict until proposal considered in public meeting by regional council Department cannot issue license for a proposed new hospital that is not in conformity with regional plan without the affirmative recommendation of the regional hospital council

1402 5 Requires approval of state department for expansion of an existing hospital

11. Medical Standards for Hospitals

Hospital planning is not the only area in which legislation is needed Medical service standards must be made mandatory for all hospitals, not just for those that voluntarily seek accreditation The need for tighter regulation can best be seen by the following reports

(a) Medical Economics, 1960, quoted the American College of Pathologists as warning doctors that 78 percent of the hospitals of under 100 beds had inadequate laboratory supervision

(b) Dr Kenneth E Bahecock, Director of the Joint Commission on Accreditation of Hospitals, reported that last year 1,000 out of 4,000 major hospitals inspected failed to meet standards of good hospitalization During the year, 223 accredited hospitals had taken a turn for the worse Of the 1,000 mentioned 400 were refused accreditation, 600 put on probation In addition, there were 3,000 hospitals that were not

accredited or that were under 25 beds and were not inspected. Dr. Babcock goes on to report that in one hospital 600 out of every 1,000 operations were abortions. In another, there was removal of 380 uteri, of which 300 were unnecessary. James C. Doyle, M.D., Assistant Professor of Gynecology at the University of Southern California, earlier made a similar study of hysterectomies performed in Southern California hospitals, with similar results.

(c) A 1960 study by the American College of Surgeons in 24 top grade midwestern hospitals indicates that there is 24 percent overuse of antibiotics in hernia surgery. One thousand five hundred thirty-six hernias were performed. Five hundred sixty-nine should not have needed antibiotics. Of this number 421 received them, however. It was estimated that this unnecessary use of antibiotics added \$44.50 per stay for each patient, as well as being harmful in some cases, to the patient. While it is true that the Joint Board of Accreditation does a conscientious job of trying to elevate standards, it has no control over almost one-half of the hospitals in the United States. *Since its actions are voluntary, those who want to practice in an unethical way continue to do so.*

In California the situation is worse than in the country as a whole, as is shown by Table No. X.

TABLE No. X
Percentage of Accredited Hospitals in California

Type of hospital	Number	Percent accredited
State	2	100
City-County	51	52.9
District	48	35.4
Nonprofit	181	70.7
Proprietary	161	21

The concern of labor in this respect led to the appointment of a hospital committee by the Los Angeles County Federation of Labor, AFL-CIO, to study the entire problem in 1958. This concern also resulted in resolutions adopted unanimously at the last statewide convention of the AFL-CIO which called for stricter regulation of hospitals.

In a report to the Federation, the committee told of a case at a North Hollywood hospital which it had visited because of a complaint from the Teamster's Union. A charge of \$167.52 for three days hospitalization for an ingrowing toenail was reported. The average daily charge in this hospital was admitted to be \$55-\$57.

The owner of the hospital, an M.D., admitted that this was an unreasonable charge, and that this was the type of surgery he would do in his own office. He further stated that the reason for the high cost was that the surgeon had used the operating room for one and a half hours and had ordered unnecessary supplies and drugs.

When asked why the hospital did not deny such doctors staff privileges, he stated that they would merely go to another hospital, and his occupancy would drop.

Other items in the report were

- (1) poor hospital planning had led to chaotic conditions
- (2) many profit-making hospitals met no standards at all,
- (3) that since there were no uniform accounting methods hospital charges varied greatly, and that the average hospital charges for

a tonsillectomy in Los Angeles varied from about \$44 to \$150 per case.

- (4) that kickbacks were made to doctors by some hospitals.

When it is recognized that 29.3 percent of our nonprofit hospitals and 79 percent of our proprietary hospitals are not accredited, and that projections indicate we will continue to have more of the small hospitals which are usually proprietary and generally not interested in accreditation, the need for legislation to enforce the decent standards of the accredited hospitals can be readily seen.

Additional recommended amendment to the Health and Safety Code:

- 14115 State Department shall adopt medical practice standards established by State Boards of Medical and Osteopathic Examiners. Boards shall investigate medical practices and report violations to State Department.

Other types of legislation, and other proposals, have been suggested as a means of controlling hospital practices.

(a) Mr. George Sheeter, formerly Administrator of the American Hospital, has proposed that every hospital have a licensed physician or surgeon on duty 24 hours a day, and that an independent pathologist review all tissue slides. His recommendations are concurred with by Richard Blum, mentioned earlier in this report. In hospitals surveyed in Southern California, only 36 out of 84 proprietary hospitals have a doctor on duty 24 hours a day, while in the nonprofit hospitals 35 out of 69 have doctors 24 hours a day.

The December 25, 1954 issue of The Journal of the American Medical Association carried an article by Drs. Myers and Stephenson which stated:

"Not all surgical tissues are diagnosed honestly. Some surgeons are reluctant to accept 'normal tissue' as an accurate diagnosis. Some pathologists are coerced into attempting to report some pathological process in every specimen. Some physicians are unwilling to criticize the surgery of a colleague. The decisions of the tissue committee are sometimes not recorded properly, making it difficult or impossible to evaluate the surgery later."

If these difficulties exist in accredited hospitals, surely conditions are even worse in nonaccredited ones.

(b) Richard Blum, Ph.D., mentioned earlier in this report, has stated that hospitals should make minutes of their staff meetings available to the public, and that a lay person should be invited to sit in as an observer on committee meetings. He also proposes that there be an accreditation system which would be operated by a State agency, with renewal each year of the accreditation status. Any doctor found to violate hospital rules would be put on probation for at least six months, and his work would be reviewed continually. If at that time there was no improvement, then his work would be restricted, and he could be reinstated only with approval of the accreditation team. Small hospitals, he believes, should be limited to emergency work, diagnostic procedures, and minor operations.

He estimated that inasmuch as 2 percent to 2½ percent of all physicians are psychopathic, chronic alcoholics, or narcotic addicts, they

should not be allowed to practice in any hospital until examined by a psychiatrist. The same should hold true of nurses and other employees who have any contact with patients. Also, he proposes that medical schools should improve instruction, insofar as the responsibility of the doctor to the hospital is concerned, and that medical students should be allowed to sit in with hospital committees, especially tissue committees.

(c) The National Health Federation, the Patients Aid Society, The American Patients Association, and the American Natural Hygiene Society, organizations with limited financing but who have large numbers of lay persons supporting them, all have recommended strongly that every hospital be required by law to have an independent pathologist review all tissue slides, and that patients' medical records be micro-filmed and made available to the patient or his representative. One of the most frequent complaints received has been in regard to the inability of patients to secure their own medical records, although they appear to be made readily available for everyone else, including insurance personnel.

(d) Central medical records: Bertram R. Bernheim, M.D., Associate Professor of Surgery at Johns Hopkins believes that all medical records should be centrally kept, and subject to review by a medical audit. He stated, in a recent article, as follows:

"In other words, society has certain rights, and one of them is to know exactly what is going on in our hospitals. Society goes to considerable lengths to supervise its banks, even, indeed, to having the Federal Government insure funds deposited therein. Why shouldn't it go to similar lengths with regard to hospitals? Is life of less importance than money?"

12 and 13. *Hospital Financial Reports and Schedule of Charges*

Hospital accounting. One of the major complaints against hospitals has been the impossibility of securing an accounting from a hospital, which is understandable in view of the patient's reaction to a very high hospital bill. This is not a new complaint. Several years ago the Health Plan Consultant's Committee, AFL-CIO, submitted a bill of particulars to the Hospital Council of Southern California showing variations of as much as 300 percent for identical items.

As a result of this, and other complaints, the Hospital Council did adopt a series of regulations known as the Guiding Principles of Hospital Administration. In effect, this provided for uniform accounting and pricing methods.

A survey which I studied recently shows that there is still a wide variation of charges. In the Long Beach area charges varied for the same procedure or item, in similar types of hospitals, from 25 percent to 100 percent or more in many cases.

It must be conceded that the Hospital Council is making a valiant effort to enforce the Guiding Principles. Complaints are being received and heard promptly, and adjustments are being made.

However, there are weak links that seem to make legislation in this area important. In one instance, a welfare fund complained about a hospital's procedure, was upheld by the Council, but the hospital con-

cerned, the Valley Hospital in Van Nuys, promptly refused to abide by the Council's decision and took the patient to small claims court.

Some 50 hospitals in Los Angeles and San Diego, who had subscribed to the Guiding Principles, were recently visited to determine if the charging schedules were readily available. In most cases, the clerks either knew nothing about the Guiding Principles, referred the investigators to the Hospital Council, and in only two cases did they make the schedules available. This program, effective July 1, 1959, has improved the situation somewhat, but still has not made the pricing methods of hospitals easily accessible or understandable to the public. Then, of course, as in the case of accreditation, we find that most of the worst hospitals either do not subscribe to the Guiding Principles, or pay no attention to them.

In addition to the problems of enforcement there are those caused by the preponderance of hospitals run solely for profit. These hospitals, in many cases, will not go along with accreditation, the Guiding Principles, or any other self-policing methods that hospitals adopt. A few examples of the profits which can be made follow:

(a) *Modern Hospital*, in an article concerning excess profits in Southern California hospitals, reported that one hospital in Los Angeles made a profit of \$10 a day per bed, and that in two years of operation it was able to completely pay for its initial cost.

(b) A Culver City Hospital report which I was able to see showed a net income in one quarter of \$41,115, with a gross income of only \$265,300.

(c) A brochure for Morningside Hospital in Los Angeles, 86 beds, indicated a projected income of \$1,084,136, on which the net profit would be projected at \$129,888. The total cost was estimated at \$900,000, of which the investors reportedly put up \$300,000.

(d) A sales brochure for Bon Air Hospital, 39 beds, indicated an estimated projected annual profit of \$91,500. The value of the hospital is estimated at about \$400,000. Operating profit would pay for the hospital in less than five years. This brochure was prepared by the American Hospital Management Corporation.

Additional recommended amendment to the Health and Safety Code:

- 14067 Annual report of operations must be filed with department
 - (b) Each hospital shall make public its schedule of charges
 - (c) Annual reports to be available to public.
 - (d) Department may investigate complaints.
- 14111 State department, after consultation with advisory board, may make reasonable regulations, including standards of safety, facilities and equipment. May prescribe standards for determining public necessity. May prescribe uniform standards of accounting and reporting.

14. Information Concerning Hospital Applications

As indicated in the findings that I have presented, the restrictions imposed by Section 1416 of the Health and Safety Code impede any effective investigation of hospital practices and their effect on health

insurance costs, and I therefore recommend repeal of this section so that all the facts concerning our hospitals can be made known

15. Closer Investigation of "Nonprofit" Hospitals

Many indications exist that some "nonprofit" hospitals become very profitable. This is achieved by excessive rent and interest provisions, and leasing out of the profit-making aspects of a hospital, namely laboratory, X-ray, and pharmacy. Several examples of this are:

(a) William Henderson, who in 1959 published a hospital rate manual, stated that Northridge Hospital often profited as much as \$45 per patient day, and that the average charge was \$70. A published report showed that this hospital sold out to a nonprofit corporation with a profit of \$127,000 on an investment of about \$500,000, and contracted for the owner to serve as "administrator" for \$1,000 a month for 12 years, and as a consultant for the next 10 years at \$900 a month. Dr. Frederick Gruneck, the owner, is about 60 years of age, and in the event of death the entire contract is to be paid to his estate.

An ad in the *Ojai Valley News* of September 4, 1958, in relation to this hospital, was headed "Disclose Profits of 'Nonprofit' Hospital." It stated that the owners of the land, of which Dr. Gruneck was the majority stockholder, netted a profit of \$217,435 (200 percent) on the sale to the nonprofit foundation, and that Dr. Gruneck's contract as administrator and consultant over a 20-year period would net him \$252,000, which would be paid even if he died the first year.

A report from Dun & Bradstreet, Inc., of September 12, 1958, indicates that the foundation has leased the hospital pharmacy and gift shop to a corporation headed by Dr. Gruneck. At that time, its volume of business was \$130,000 per month.

(b) A brochure for Anaheim Memorial Hospital indicated a projected income of \$1,092,018. It is reported that \$500,000 cash was put up by the investors. In five years they will have recovered their investment, and paid off a large part of the loans made to buy the land and build the hospital. This is supposedly a nonprofit operation.

It is for these reasons that I believe our most serious problem is that of the hospital, and that no voluntary approach can solve all the problems of the unethical hospital operators, and that mere exposure cannot serve the purpose. As long as voluntary methods permit the operation of hospitals, no matter how few in number, which are not in the public interest and which endanger public health and safety, I believe that legislation, as proposed in this report, is necessary.

ANSWERS TO THREE QUESTIONS ABOUT THE CALIFORNIA DISABILITY INSURANCE PROGRAM

The calculations given here are based on the benchmarks for the 1959 Legislative estimates (Report 435S #2) and must be revised when 1961 estimate benchmarks become available. The estimates are averages for the years 1960, 1961, and 1962. Interest on the fund is excluded from the calculation of revenue because of the uncertainty of estimating it. All calculations of contributions assume a 10 percent employee tax.

* This material represents a reply made to Assemblyman Philip Burton by the California Department of Employment and is inserted here at the request of Mr. Burton.

(1) What taxable wage base would support a state plan program with a maximum weekly basic benefit amount of \$65, \$80, \$90, and other present benefits, (a) if the present share of coverage is maintained (State Plan 65 percent and voluntary plans 35 percent of coverage) or (b) if all coverage were under the state plan:

Maximum weekly basic benefit amount	Taxable wage ceiling required to balance income and costs, one percent tax	
	State plan only with 65 percent of coverage	State plan with total coverage
\$65-----	\$4,683	\$4,323
80-----	5,051	4,693
90-----	5,175	4,835

(2) What maximum weekly basic benefit amount can be supported by various taxable wage ceilings, under the two above assumptions relating to coverage?

Taxable wage ceiling	Maximum weekly basic benefits supported by one percent tax	
	State plan only with 65 percent of coverage	State plan with total coverage
\$4,323-----	1	\$65 00
4,400-----	1	66 85
4,600-----	1	74 62
4,683-----	\$65 00	79 50
4,800-----	68 70	87 21

¹ Less than current \$85 formula

The data in this section was prepared by the California Department of Employment in response to questions propounded by Assemblyman Philip Burton. It is included in the Appendix at the request of Mr. Burton.

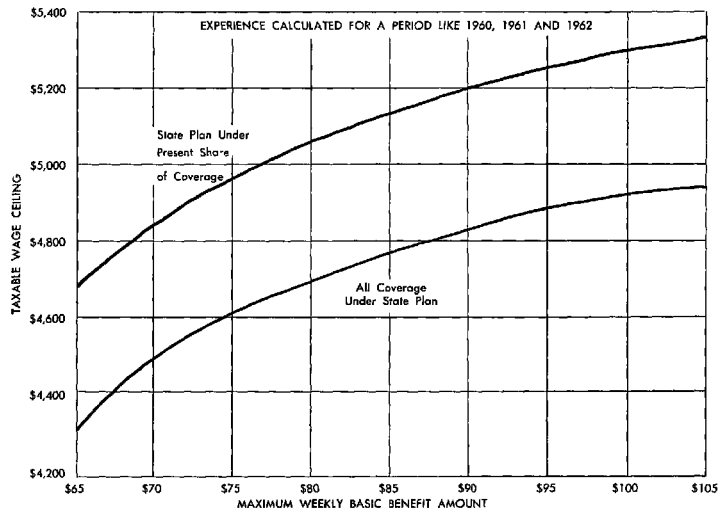
Observation Re: Q-2 by Assemblyman Burton

I would like to draw particular attention to the issue raised if a \$4,800 taxable wage ceiling is established. If the UCD program (paid for entirely by the employee) was placed on the same basis as the unemployment insurance program (paid for entirely by the employer), e.g. establish a state "monopoly" fund—it would be possible to raise the weekly benefit level \$18.51 higher than would be possible by continuing the present participation of private insurance carriers.

(3) What surplus of worker contributions above all expenditures might be expected at various taxable wage ceilings with a \$65 maximum weekly basic benefit amount under the two above assumptions regarding coverage (interest on fund excluded from revenues and from surplus) ?

Taxable wage ceiling	State plan only with 56 percent of coverage		State plan with total coverage	
	Amount (millions)	Percent of total cost	Amount (millions)	Percent of total cost
\$3,600.....	---	(Deficit)	---	(Deficit)
4,323.....	---	(Deficit)	0	0
4,683.....	0	0	\$3 5	5.0
4,800.....	\$1 9	1 7	12 8	7 6
5,000.....	5 5	4 8	17 5	10 3
5,400.....	11 1	9 7	27 3	16 1
6,000.....	18 2	15 8	39 1	23 1
7,000.....	26 2	22 8	53 8	31 8
8,000.....	29 7	25 8	61 7	36 4
9,000.....	30 5	26 5	64 4	38 0
10,000.....	30 6	26 6	64 8	38 3

TAXABLE WAGE CEILING NECESSARY TO BALANCE A PROGRAM WITH VARIOUS
MAXIMUM WEEKLY BASIC BENEFIT AMOUNTS UNDER TWO
ASSUMPTIONS RELATING TO COVERAGE



**Estimated Additional Income or Gain Which Would Have Accrued to the California State Plan Disability Fund
In 1947-1962 Under Hypothetical Conditions**

(Specified by Mr. Phillip Burton Estimates based on Report 4355 #2)

Calendar year	Total additional income or gain accrued to Disability Fund*	Net gain if female content, earnings, etc., same for VP and SP coverage	Additional income from extended liability ^b assessments on an accrual basis			Additional income from assessments for administrative costs
			Total	Attributable to removal of interest credits	Attributable to removal of ceiling on assessments	
1	2	3	4	5	6	7
1947	\$2,210,000	\$1,587,000	\$623,000	\$623,000	-----	-----
1948	2,220,000	958,000	1,262,000	703,000	\$559,000	-----
1949	3,950,000	1,682,000	2,268,000	1,094,000	1,204,000	-----
1950	4,736,000	1,282,000	3,454,000	1,345,000	2,109,000	-----
1951	4,645,000	2,332,000	2,313,000	1,516,000	697,000	-----
1952	4,149,000	1,761,000	2,388,000	1,655,000	833,000	-----
1953	4,824,000	2,216,000	2,608,000	1,568,000	1,040,000	-----
1954	5,138,000	1,369,000	3,769,000	1,452,000	2,417,000	-----
1955	4,404,000	1,257,000	2,776,000	1,423,000	1,353,000	\$371,000
1956	5,078,000	1,597,000	2,703,000	1,459,000	1,244,000	778,000
1957	6,515,000	1,874,000	3,816,000	1,523,000	2,293,000	825,000
1958	9,342,000	2,360,000	6,189,000	1,353,000	4,836,000	793,000
1959	10,609,000	2,670,000	7,189,000	1,166,000	6,023,000	750,000
1960	5,645,000	1,806,000	3,095,000 ^b	700,000	2,395,000 ^c	750,000
1961	5,248,000	1,100,000	3,348,000 ^b	600,000	2,748,000 ^c	800,000
1962	4,038,000	100,000	3,148,000 ^b	500,000	2,648,000 ^c	850,000
1947-1962	\$2,741,000*	25,845,000	50,979,000	18,580,000	32,399,000	5,917,000

* In addition, the Disability Fund would have accumulated about \$16 million of compound interest over the period 1947-1962

^b For 1960, 1961, and 1962, these would be additional prorated benefit assessments

^c These entries measure the effect of voluntary plant turnover, of adverse selection and, for 1960, the exclusion from proration of 1960 benefits paid to extended liability claims beginning in 1959

If all the conditions specified on the following page had prevailed, the Disability Fund at the end of 1962 would be, instead of an estimated \$17.2 million,¹ approximately \$145.9 million

¹ See Report 4368 #2.

Assumptions

1. *Benchmark:* These estimates are based on the 1959 legislative benchmarks (Report 435S #2) and must be revised when 1961 legislative estimate benchmarks become available
2. *Selection:* No selection of better risks on the part of private carriers resulting in different characteristics as to sex, age, industry, occupation, earnings levels, etc.—this goes far beyond the old “adverse selection” regulation which covered only female content at inception of plans
3. *Assessment for benefits to the unemployed:*
 - a. Assessments begin with January 1, 1947,
 - b. No interest credit used to compute either the Extended Liability Account or the prorated benefits assessable to private carriers,
 - c. No ceiling on voluntary plan assessments,
 - d. No suspension of assessment for 1959,
 - e. No difference of risk, either as to personal characteristics or risk of unemployment, between state plan and voluntary plans.
4. *Administrative assessment:* No suspension of administrative assessment to private carriers
5. *Division of coverage:*
 - a. The proportionate division of coverage between state plan and private carriers is taken as it was in fact for every year through 1959;
 - b. Coverage to remain constant with no turnover at 35 percent voluntary plan and 65 percent state plan in 1960, 1961, and 1962

Warning The conditions listed are interrelated and different results would be secured if any were taken separately

It would be misleading to read separately the figures in each column of the table and to conclude that they represent the result of the application of one assumption isolated from the others.

The assumption as to selection, for example, presumes that the average risk and the average taxable wage are the same under state plan coverage and under voluntary plan coverage. The equality of the average taxable wage in the two types of coverage affects the hypothetical assessment of benefit payments to the unemployed and the savings accruing, therefrom, to the state fund. Without the given assumption on selection, the savings to the state fund that would have resulted from the given hypothetical method of assessment for benefits to the unemployed would have been larger by several million during the whole period 1947-1962 than the table shows.

The assumption as to selection affects the results of the assumption on the assessment for benefits paid to the unemployed, but the reverse is not true.

The assumptions of (a) the removal of interest credits in the computation, and (b) of the removal of the ceiling on the assessment for benefits paid to the unemployed, also affect each other's results. Because of the existence of a ceiling of 0.03 percent of taxable wages of

voluntary plan assessments until 1958, the interest credit was effective in reducing the voluntary plan assessments only in 1947 and 1948. In 1960, 1961, and 1962, the new high ceiling on prorated benefits again causes the interest credit to reduce the assessment. In the intervening years the interest credit was merely a book transaction which had no effect on assessments.

Observation Re: Report 435T #7 by Assemblyman Burton

It is to be noted that an amount of 82 7 million dollars, plus 16 million dollars (in added compound interest), or a total of 98 7 million dollars, would be in the State Disability Fund, if the special privileges and advantages of the private carriers over the state fund had not been permitted for the period (1947-1962)

**EFFECTS ON THE STATE PLAN OF ASSUMING CANCELED
VOLUNTARY PLAN COVERAGE**

(On July 1 and October 1, 1960)

On July 1, 1960, an estimated 53,000 workers (currently reported employment) were transferred from voluntary plan to state plan coverage as the result of the cancellation of coverage by private carriers. On October 1, an additional 92,000 workers transferred to state plan coverage for the same reason.

We have not yet experienced the actual effect of this new coverage on the state fund during the remainder of 1960, of course, and no records describing it will be available until the early part of 1961. However, on the basis of historical information relating to premiums earned and benefit losses incurred by voluntary plans, and on the quarterly variations in premium earnings and benefit payments, the effect of this new coverage on the Disability Fund can be estimated.

Such an estimate indicates that for the remainder of 1960 for each life reverting to the state plan on July 1, 1960, the state plan will earn \$11.17 in premiums and will incur \$17.51 in benefit losses, while for each life reverting to state plan coverage on October 1, 1960, the state plan will earn \$4 in premiums and incur \$9.28 in benefit losses.

The accrual value of this change in insurer may be summarized as follows:

	<i>Estimated premium on new coverage accruing to State</i>	<i>Estimated benefit losses on new coverage incurred by State</i>
Quarter three -----	\$581,000	\$400,000
Quarter four -----	579,000	1,200,000
Total for 1960-----	960,000	1,750,000

Therefore the estimated accrued loss to the state plan for 1960 will be \$790,000

These estimates are only for benefits and contributions and do not include the effect of the new coverage on administrative costs and other minor elements.

Observation Re: Report 435T #10 by Assemblyman Burton

Current provisions of the law are inadequate to protect the state fund from benefit losses in excess to premiums received as result of the cancellation of coverage by private carriers after the first six or nine months of the benefit year. Legislation to correct this inequity to the state fund is needed.

ASSEMBLY, CALIFORNIA LEGISLATURE

December 9, 1960

HON THOMAS M REES, *Chairman*

Assembly Finance and Insurance Committee
State Capitol, Sacramento 14, California

DEAR TOM: In the 1959 Regular Session, Assemblyman Biddick introduced Assembly Bill No. 2531 known as the Uniform Securities Act. This bill was referred to the Judiciary—Civil Committee and in view of the interest which the Finance and Insurance Committee has in the protection of investors, you appointed me to serve with this committee as a representative of the Finance and Insurance Committee. Extensive hearings were held in Los Angeles and in San Francisco under the chairmanship of Assemblyman William Biddick.

A detailed report of the findings of this committee has been submitted to Hon. Ralph Brown, Speaker of the Assembly, and Members of the Assembly with a letter of transmittal dated November 25, 1960, signed by William Biddick, Jr., Chairman

I also cosigned the letter of transmittal and the report itself has my complete support and endorsement.

Findings of the committee included the following:

(1) California's present Corporate Act, which has been the basic law for 43 years, fails to provide adequate standards for the guidance of legitimate businesses to seek the raising of capital.

(2) Procedural uniformity has been sadly lacking both in California's present law and in those of the other 49 states

(3) California's Corporate Securities Law provides inadequate protection in the field of secondary offerings

(4) The present law is unclear as to when a permit is required and the extent, measure and duration of civil liabilities.

(5) Present conflict of laws and rules are inadequate to provide any fair degree of predictability

(6) There is a needless and wasteful lack of uniformity between registration procedures under the present California law and those under the Federal Securities Act

(7) Insufficient recognition is made under present law of the organizational problems of small business. The new Uniform Securities Act, in the amended and polished form in which it is proposed for adoption in California, represents the latest and best prepared effort to present to California and the other states an orderly and coherent scheme of securities regulation

Seldom has any major legislation received the attention of so many able students of the problems involved. It is the result of the combined

efforts of the American Bar Association, the National Conference of Commissioners on Uniform State Laws, the Investment Bankers Association of America, the National Association of Security Dealers Incorporated, the Securities and Exchange Commission, three years of study by the Los Angeles Bar Association, and after six months of study, the Governors of the State Bar of California have endorsed the measure. Commissioner of Corporations John Sobieski has given the act, as amended, his full support.

Chairman Biddick after the extensive hearings in San Francisco and Los Angeles, appointed an advisory committee headed by Graham L. Sterling, 1958-1959 President of the State Bar with members including professors of law from U C L A and University of California at Berkeley, Assistant Attorney General Herbert Wenig, Corporations Commissioner John Sobieski, investment banker William Hughes, President of the Investment Bankers Association, and attorneys Eric Sutcliffe, San Francisco, James Irvine, Los Angeles, Van Cott Niven, Los Angeles; Robert Edwards, Los Angeles, Joseph Henderson, San Jose; John Austin, San Francisco, and Bauer Kramer of Oakland. This committee composed of representatives of the critics of the law as proposed in 1959 as well as its chief exponents agreed on amendments remedying the major criticisms of the act during the hearings and ended their long and intensive work on the subject in substantial agreement as to the desirability of the proposed amendments.

Whereas the federal law provides basically for full disclosure in the sale of securities, this Uniform Securities Act as proposed will quite properly go beyond this:

There are three basic types of state securities regulations:

- (1) The prohibition against fraud in the sale of securities
- (2) Regulations of the security business by regulating the people engaged in the business, that is, registration and discipline of dealers, brokers and salesmen
- (3) Registration or qualification of the securities themselves

The Uniform Securities Act covers all three types of regulation, and adds provisions for civil liability with specific remedies and a definite period for limitation of actions and provisions for determining applicability of the law in interstate transactions.

One of the weaknesses in the law as introduced in the 1959 Session was that it put undue burden on the family corporation and the small business. This has been remedied by granting exemptions for transactions pursuant to an offer of or sale of securities provided:

- (1) No more than 10 persons will own all the securities after sale.
- (2) The issuer files with the commissioner a notice with specified basic information and the commissioner does not disallow within five business days.
- (3) The certificates bear a legend showing that subsequent transfers are illegal unless the commissioner's consent has first been obtained.

A minimum filing fee is provided I understand that this bears the approval of Commissioner John Sobieski and has been termed by Professor Jennings of Boalt Hall "The best limited offerings exemption in the United States "

I personally feel that this act will provide maximum protection for California investors, will serve as a model for other states in the preparation of more uniform regulation of security sales, and that it will have the effect of facilitating the raising of capital for legitimate enterprise in our State I feel that it is a scholarly piece of legislation and that it would put the State of California at the forefront of all states of the union in having the very finest securities act

Respectfully submitted,

BRUCE V REAGAN

RESOURCE MATERIAL ¹

MEMORANDA

- Opinion of Legislative Counsel, re "Interest Rates of Lending Institutions" (October 5, 1959).
- Memorandum re "Regulation of Charges Under the Personal Property Brokers Law, California Small Loan Law, Industrial Loan Law and California Credit Union Law," courtesy of the California Division of Corporations (October, 1959).
- Memorandum re "Federal Requirements Having an Impact on Interest Rates and Charges in the Field of Real Estate Finance," courtesy of the California Division of Real Estate (November, 1959).
- Memorandum re "Mortgage Loans of Insurance Companies," prepared by California Department of Insurance (November, 1959).
- Memorandum re "Interest and Fees of Savings and Loan Associations," prepared by California Division of Savings and Loan (December, 1959).
- Memorandum re "Interest Rate Regulation of Banks," prepared by California State Banking Department (December, 1959).
- Memorandum re "Buying a \$169.50 TV Set Eleven Ways and Nine Prices," prepared by California Consumer Counsel (January, 1960).
- Memorandum re "Interest Rates and 'Equivalent Interest,'" prepared by Los Angeles County Federation of Labor, AFL-CIO (January, 1960).
- Memorandum re "Operation of BankAmericard," courtesy of Bank of America (January, 1960).
- Memorandum re "The Credit Union Tax Position," courtesy of California Credit Union League (March, 1960).

PERIODICALS

- "An Analysis of Laws Governing Loan Companies," *The Minute Book* (September, 1957).
- "Final Report of the Assembly Interim Committee on Finance and Insurance Subcommittee on Lending and Fiscal Agencies," *Assembly Interim Committee Reports 1957-59* (March, 1959).
- "Excessive Discounts," *Realtor's Headlines* (October, 1959).
- "Interest Rates," *Realtor's Headlines* (October, 1959).
- "The Credit Union Tax Position," *Credit Union Bridge* (February, 1960).
- "Credit Risk and Credit Rationing," *Quarterly Journal of Economics* (May, 1960).
- "Should Lenders Tell Borrowers the Truth?" *Credit Union Bridge* (June, 1960).
- "Legislative Regulation of Retail Installment Financing," *UCLA Law Review* (July, 1960) ².
- "Credit Squeeze," *Wall Street Journal* (August 19, 1959).
- "Democrats to Push Bill to Require 'Labels' for Loans," *Wall Street Journal* (January 6, 1960).
- "Pacific Finance Tells Record 1959 Operations," *Los Angeles Examiner* (February 16, 1960).
- "Home Financing Cost Near Peak," *Los Angeles Mirror News* (February 17, 1960).
- "Delinquency Rates Rose in Most Installment Categories in January," *Wall Street Journal* (March 15, 1960).
- "Reserve Board, FTC Back Bill Requiring Lenders to List Total Interest Cost on Loans," *Wall Street Journal* (March 16, 1960).
- "Personal Bankruptcies on Rise, Fear it's Socially Acceptable," *Los Angeles Daily Journal* (March 18, 1960).
- "U.S. Law Urged to Protect Buyers on Installment Plan," *Wall Street Journal* (March 24, 1960).

¹ These reference materials were used in the study conducted by the Lending Institutions Section.

² The committee staff found especially valuable the research made on the history of consumer credit legislation by Messrs. Boren, Davee, Schwartz, Steinman, and Williams. The timely publication of this exhaustive work made it possible for the staff to devote its attention to other pressing matters, thereby foregoing considerable research not completed at that juncture.

- "Mortgage Points, Like Time Buying, Produce Big Profits," *Newark Evening News* (March 29, 1960)
- "'Misery File' Shows Impact of High Consumer Rates," *Newark Evening News* (March 30, 1960)
- "FRB Chief Backs Interest-Labeling Bill, Cites Need to Solve Technical Problems," *Wall Street Journal* (April 6, 1960)
- "Agency May Ask Savings-Loan for Prior Notice of Dividend Rises to Restrain Rates," *Wall Street Journal* (April 25, 1960)
- "Senator Proposes Law to Unveil True Cost of Installment Credit," *Los Angeles Mirror News* (May 31, 1960).
- "Cheaper Credit. Bankers Foresee First Drop in Business Loan Charges Since 1958," *Wall Street Journal* (June 2, 1960)
- "Bankers Differ on Whether Discount Rate Cut Will Spur Reduction in Prime Rate," *Wall Street Journal* (June 3, 1960).
- "Good News Cheaper Borrowing Costs Hit L.A. in Last 2 Weeks," *Los Angeles Mirror News* (July 1, 1960)
- "Credit Consultant Discusses Interest Rate Formulas," *Los Angeles Daily Journal* (August 11, 1960).

BOOKS

- Alhadeff, David A *Monopoly and Competition in Banking*, University of California Press, 1954
- Neufeld, M R *Neufeld's Guide to Installment Computations*, Mack Publishing Company, 1953
- Neufeld, M R *Trends in Consumer Finance*, Mack Publishing Company, 1954

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ASSEMBLY INTERIM COMMITTEE REPORTS

1959-1961

VOLUME 16

NUMBER 6

FINAL REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON
PUBLIC UTILITIES AND CORPORATIONS

TO THE CALIFORNIA LEGISLATURE

(House Resolution No. 326.19, 1959)

MEMBERS OF THE COMMITTEE

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FRANK LUCKEL, *Vice Chairman*

LEE M. BACKSTRAND

CARL A. BRITSCHGI

MONTIVEL A. BURKE

RONALD BROOKS CAMERON

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AUGUSTUS F. HAWKINS

JAMES I. HOLMES

PAUL J. LUNARDI

CHARLES H. WILSON

November 15, 1960



Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

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Speaker

HON. WILLIAM A. MUNNELL
Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore

HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON
PUBLIC UTILITIES AND CORPORATIONS
SACRAMENTO 14, CALIFORNIA, January 2, 1961

HONORABLE RALPH M. BROWN,
Speaker of the Assembly; and
Honorable Members of the Assembly
State Capitol

DEAR SPEAKER BROWN AND MEMBERS: Pursuant to House Resolution No. 326 of the 1959 California Legislature, your Assembly Interim Committee on Public Utilities and Corporations submits its report covering its functions and activities during the 1959-61 interim.

The work of the committee was divided, the full committee studying some subjects and subcommittees other subjects. However, the recommendations submitted in this report have been approved by all members of this interim committee.

This report represents all work done by the Interim Committee except for the study of House Resolution No. 358, relative to pay television, which will be submitted as a separate report.

Respectfully submitted,

REX M. CUNNINGHAM, *Chairman*

HOUSE RESOLUTION NO. 326
Relative to Constituting Certain Standing Committees
of the Assembly as Interim Committees

Resolved by the Assembly of the State of California, as follows:

1. The following standing committees of the Assembly are hereby constituted Assembly interim committees and are authorized and directed to ascertain, study and analyze all facts relating to (1) the subjects and matters assigned to them by this resolution; (2) any subjects or matters referred to them by the Assembly; (3) any subjects or matters related to (1) or (2) which the Committee on Rules shall assign to them upon request of the Assembly or upon its own initiative;

* * * * *

(s) The Committee on Public Utilities and Corporations is assigned the subject matter of the Public Utilities Code and the Corporations Code, all uncodified laws relating thereto, and other matters relating to public utilities and corporations.

* * * * *

This is extracted from House Resolution No 326, which established all Assembly Interim Committees for the period between the 1959 and 1961 General Legislative Sessions. The full text of House Resolution No 326, as passed by the Assembly, is found in the Assembly Journal of June 18, 1959 on pages 5764 to 5767

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**Recommendations to the 1961 Legislature of the
Assembly Interim Committee on Public Utilities and Corporations
Covering Subjects Under Study During the 1959-61 Interim**

HOUSE RESOLUTION NO. 28

Relative to Air Transportation

The committee recommends that the Legislature amend the Public Utilities Code in order that any airline or charter airline operating wholly within the State of California, or airline or charter airline operating without a certificate of public convenience from the Federal Civil Aeronautics Board, or other federal agency designated to issue such certificate, be required to obtain a California certificate of public convenience from the California Public Utilities Commission.

The sole exception to this control by the California Public Utilities Commission shall pertain to air safety, currently under the exclusive jurisdiction of the federal government

HOUSE RESOLUTION NO. 337

**Relative to an Interim Study of the Los Angeles
Metropolitan Transit Authority**

Because of the tremendous amount of opposition presented to this committee by various organizations and local government agencies to proposed changes in the Los Angeles Metropolitan Transit Authority Act, as presented to this committee by the authority, the committee feels that even though there is a definite need for a mass rapid transit system in the Los Angeles metropolitan area the committee cannot, without further study, recommend definite legislative changes in the act.

The committee recommends that the legislative changes requested by the Los Angeles Metropolitan Transit Authority be given further study in order that more accord between all parties concerned may be accomplished before changes in the Los Angeles Metropolitan Transit Authority Act are recommended or enacted.

HOUSE RESOLUTION NO. 358

Relative to a Study of Subscription Box Office and Pay Television

(The recommendations, summary and findings on the subject of House Resolution No 358 are printed in a separate report)

HOUSE RESOLUTION NO. 382***Relative to an Interim Study of Railroad Transportation Needs and Policies***

Because of the divergent views on this subject and since the committee has received no demonstrated interest in this subject, having heard only the recommendations of one group, the committee feels that testimony must be received from all parties concerned including industry and agriculture. Therefore, the committee makes no recommendation on this subject at this time.

HOUSE RESOLUTION NO. 386***Relative to an Interim Study of the Regulation of Railroads and Other Utilities by the Public Utilities Commission***

The committee directed the Public Utilities Commission to advise it of their disposition of all complaints received from the period September 24, 1959, which was the date of the first hearing on the subject, to June 30, 1960. The committee was informed that the commission had received a total of 109 informal complaints. All but six of these were received from the railroad brotherhoods. Of the 109 complaints, 86 had been corrected by negotiation of the commission's staff, 11 were under negotiation and investigation, six were found to be unwarranted and the commission on its own motion has instigated three formal proceedings.

The committee, by virtue of their study on this subject, was able to bring forth for the first time the procedures followed by the Public Utilities Commission in the processing of formal and informal complaints. The committee believes that the procedure of handling these complaints is adequate at the present time. However, it will continue to maintain its interest in the protection of the employees of railroads.

HOUSE RESOLUTION NO. 405***Relative to an Interim Study of the Sale of Business Franchises***

Following the initial hearing held on this subject on December 1, 1959, the committee learned that the Assembly Judiciary (Civil) Interim Committee planned an extensive study with relation to this subject by their Subcommittee on Prepaid Service Contracts of Health and Dance Studios.

After reviewing the Judiciary (Civil) Committee's recommendations to the 1961 Legislature in this field the committee endorses the intent of these recommendations.

INSTALLATION AND RELOCATION OF PUBLIC UTILITY FACILITIES

Predicated on its study of this problem the committee recommends that the Legislature, in its 1961 Session, adopt a resolution commending the accomplishments of existing utilities coordinating committees and urging communities not now served by such committees to form them in order that the greatest savings possible may be enjoyed by the ratepayers and taxpayers of the State of California in the installation and relocation of public utility facilities.

HOUSE RESOLUTION NO. 28

BY MR. LUNARDI

Relative to Air Transportation

WHEREAS, Under existing law the California Public Utilities Commission exercises jurisdiction over intrastate rates of air transportation companies, but does not exercise jurisdiction over any other subject of regulation as applied to air commerce; and

WHEREAS, The Federal Civil Aeronautics Board does not exercise regulatory jurisdiction over any of the intrastate activities of air carriers in California, other than safety matters; and

WHEREAS, The Public Utilities Commission has received numerous complaints concerning purely intrastate service of air transportation companies, over which neither the Civil Aeronautics Board nor the Public Utilities Commission has jurisdiction; now therefore, be it

Resolved by the Assembly of the State of California, That the subject matter of this resolution is assigned to the Assembly Committee on Rules for reassignment by it to the Assembly Interim Committee on Public Utilities and Corporations or to such other interim committee as the Committee on Rules deems proper. Such committee shall report thereon to the Assembly by not later than the fifth calendar day of the 1961 Regular Session of the Legislature, including in its report its recommendations for any appropriate legislation relating to the subject matter of this resolution and particularly any legislation relating to the jurisdiction of the Public Utilities Commission over the intrastate activities of air carriers in California.

HEARINGS HELD ON HOUSE RESOLUTION NO. 28

Four hearings were held by the committee throughout the State as follows: October 6, 1960, City Hall, Redding; October 7, 1960, City Hall, Fresno; October 11, 1960, City Hall, Ventura; October 14, 1960, Farm Bureau Building, El Centro. The above mentioned locations were picked since the committee felt that the major metropolitan areas were quite capable of enforcing their demands for adequate air service whereas other areas might not be quite so fortunate.

PERSONS APPEARING AND TESTIFYING BEFORE THE COMMITTEE

J. FLOYD ANDREWS, Pacific Southwest Airlines
WILLIAM S. COBURN, City Manager, City of Porterville
TOM CROSON, West Coast Airlines
JAY P. DE'LEAU, Ventura Chamber of Commerce
CHARLES F. DENNY, Redding Chamber of Commerce
WILMER J. GARRETT, Superintendent of Airports, City of Fresno
M. J. GAGNON, Senior Transportation Expert, California Public Utilities Commission
RALSTON O. HAWKINS, Bonanza Air Lines
B. FRANKLIN KNAPP, Fresno City & County Chamber of Commerce
MAX A. KING, Pacific Air Lines
LEV McINTOSH, Manager, Imperial County Airport

WILLIAM T. MIDDLETON, Trans-World Airlines, Inc.
HELEN EWING NELSON, Office of Consumer Counsel
BURCK SMITH, American Airlines, Inc.
J. STANLEY STROUD, Air Transport Association
W. R. THIGPEN, Air Transport Association

REASON FOR INTRODUCTION OF HOUSE RESOLUTION NO. 28

Official and quasi-official agencies within California have received numerous complaints concerning intrastate service of air transportation companies and neither the Civil Aeronautics Board nor any state agency has been able to do anything about it. Generally the type of complaints received cover such areas as sale of tickets for a given flight in excess of the seating capacity, cancellation of flights after tickets have been purchased or the inability of reaching a harmonious understanding as to the requirements of the carrier regarding reconfirmation of flights.

PRESENT JURISDICTION OVER AIR TRANSPORTATION COMPANIES IN CALIFORNIA

At the present time the California Public Utilities Commission exercises jurisdiction over the intrastate rates of air transportation companies operating in California (see Exhibit I—Public Utilities Commission General Order No 105-A) However, no state agency is authorized to control services or certification of operating rights of air carriers not controlled by the Civil Aeronautics Board. (see Exhibit II—Legislative Counsel opinion No 5077, dated November 4, 1960)

The Civil Aeronautics Board does not exercise jurisdiction over any of the intrastate activities of air carriers in California, other than safety matters. In this regard, the Federal Government has complete control throughout these United States of any air carrier activity, as well as military air activity.

POSITION OF CERTIFICATED AIR CARRIERS TESTIFYING BEFORE COMMITTEE

It was the general position of the many certificated air carriers testifying before the committee that the scheduled airlines operating in interstate and foreign commerce are comprehensively and in great detail regulated by the federal government and that state regulation imposed upon such airlines would not cover an area now devoid of regulation but would result in duplicating regulation already imposed by the federal government.

Testimony given by the air carriers certificated by the Civil Aeronautics Board indicated that they would not oppose the inclusion of noncertificated and wholly intrastate airlines under the jurisdiction of the Public Utilities Commission of the State of California.

POSITION OF NONCERTIFICATED AIR CARRIER AND OTHER GROUPS TESTIFYING BEFORE COMMITTEE

Testimony received from a noncertificated air carrier now doing business in California and other groups testifying at the various locations where hearings were held on this subject gave the committee the

impression that there was no objection to placing jurisdiction of non-certificated air carriers under the Public Utilities Commission of the State of California, and, in fact, in most cases was recommended.

FINDINGS OF THE COMMITTEE

As a result of the four hearings held throughout the State in October, 1960, the committee determined the following facts:

1. There is presently no control or protection for the general public over airline or charter airline operations operating wholly within the State of California and supplying intrastate service.

2 All interstate airline operations are issued a certificate of public convenience and are controlled by the Federal Civil Aeronautics Board. The issuance of this certificate also brings within the control of the Civil Aeronautics Board all intrastate operations of those companies receiving such a certificate.

3. The regulatory powers executed by the California Public Utilities Commission relative to the intrastate operation of air carriers in California is founded in the Constitution of the State of California in Article 12, Sections 17, 20, 21 and 22 thereof. These regulatory powers concern themselves with rates charged for air service and do not apply with regard to service or certification of operating rights of air carriers.

RECOMMENDATIONS OF THE COMMITTEE

The committee recommends that the Legislature amend the Public Utilities Code in order that any airline or charter airline operating wholly within the State of California, or airline or charter airline operating without a certificate of public convenience from the Federal Civil Aeronautics Board or other Federal Agency designated to issue such certificate, be required to obtain a California certificate of public convenience from the California Public Utilities Commission.

The sole exception to this control by the California Public Utilities Commission shall pertain to air safety, currently under the exclusive jurisdiction of the federal government.

EXHIBIT I

Public Utilities Commission of the State of California

General Order No. 105-A

Cancels

General Order No. 105

RULES GOVERNING THE FORM AND FILING OF TARIFFS ISSUED BY AIR TRANSPORTATION COMPANIES

Adopted December 1, 1959 ; Effective December 21, 1959

Adopted by Decision No 59328 in Case No 5693

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AIR TRANSPORTATION COMPANY TARIFFS**Section 1—Definitions***Rule***1. DEFINITIONS****1.1 *Air Transportation Company***

"Air Transportation Company" includes every individual, firm, copartnership, corporation, company, association or joint stock association, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, engaged in the transportation by air of persons or property as a common carrier for compensation between termini within the State. The term "air transportation company" does not include express companies or freight forwarders.

1.2 *Baggage*

"Baggage" means such personal property as is necessary or appropriate for the wear, ease, comfort or convenience of the passenger for the purposes of his trip.

1.3 *Person(s)*

"Person(s)" means passengers and their baggage.

1.4 *Property*

"Property" means freight.

1.5 *Rate(s)*

"Rate(s)" includes rates, fares, charges, rules, and classifications applicable to the transportation of persons or property.

1.6 *Tariff*

"Tariff" means an original publication, supplements, amendments or revised pages thereto, or reissues thereof.

Section 2—Filing and Form of Tariffs**2. FILING AND POSTING****2.1 *Filing***

Every air transportation company shall issue and file with the Commission tariffs showing the rates for the transportation of persons and property as a common carrier for compensation between termini within the State. In filing such tariffs air transportation companies and their agents shall transmit three copies of each such tariff, supplement, amendment or revised page to the Commission in one package and under one letter of transmittal. If a receipt is desired, the letter of transmittal must be sent in duplicate, one copy of which will be stamped and returned as a receipt.

2.2 *Copies for Air Carriers*

The letter of transmittal of each tariff submitted for filing without specific authority from this Commission shall list the names and addresses of the head office of each air transportation company operating a scheduled service between points to which the tariff applies and shall contain a certification that a copy of such tariff has been served upon or mailed to each such air transportation company named at the address shown or a certification that no other air transportation company operates a scheduled service between the points to which the tariff applies. Failure to list such names and addresses or omission of such certification may result in suspension of the tariff pursuant to Rule 10 of this General Order.

2.3 *Posting*

A copy of each tariff shall be kept for public inspection at each office of an air transportation company where transportation covered by the tariff is offered for sale.

2.4 *Usual Filing*

All tariffs must be issued and filed with the Commission at least 30 days prior to the effective date thereof, except as provided in Rule 2.6, or unless otherwise specifically authorized by the Commission.

Rule**2.5 Filing of Changes Resulting in No Increase**

Changes in a rate not resulting in an increase may be made by an air transportation company on not less than 30 days' notice to the Commission and to the public by filing with the Commission an appropriate tariff. Unless rejected or suspended by the Commission, such rate shall become effective upon the effective date shown in the tariff.

2.6 Automatic Short Notice Filings

- a Tariffs may be issued and filed on not less than 5 days' notice to the Commission and to the public prior to the effective date thereof for any of the following purposes:
 - 1. To publish tariffs of newly established air transportation companies.
 - 2. To publish rates governing a new type of service not involving an increase.
 - 3. To publish rates for service to new points.
- b The letter transmitting tariffs filed under this rule shall clearly explain the purpose of the filing.
- c Tariffs filed on not less than 5 days' notice under authority of this Rule 2.6 shall bear the following statement at the bottom of the title page of each complete tariff or supplement or on each revised page filed separately:

"Issued under authority of Rule 2.6 of General Order No. 105-A."

3 TARIFF FORM AND CONTENT**3.1 Form**

Tariffs may be printed, mimeographed, typewritten, or otherwise processed, provided, however, that all copies shall be clear and legible.

3.2 Tariff Number

Each air transportation company shall file tariffs under its own consecutive numbers beginning with Cal PUC No. 1. An agent shall file under his own series of Cal PUC numbers beginning with Cal PUC No. 1.

3.3 Title Page

The title page of each tariff shall show:

- a. The Cal PUC number of the tariff in the upper left-hand corner and immediately thereunder the Cal PUC number of any tariffs canceled thereby.
- b. The name of the issuing air transportation company or agent.
- c. A statement indicating the kind of tariff; whether the tariff contains local or joint rates, or is a tariff of rules and regulations, or a combination thereof.
- d. A brief but reasonably complete statement of the territory within which, or the points from and to or between which, the rates or rules apply.
- e. The date, if any, with which the tariff expires, together with a reference to the Commission decision containing the order authorizing such expiration date if an increase in rates will result therefrom and a notation that the tariff is issued under authority of and in compliance with such decision.
- f. The date on which the rates and rules will become effective, on the lower right-hand corner; and the date on which the publication is issued, on the lower left-hand corner.
- g. The name, title, and address of the person issuing the tariff, near the bottom of the page.

3.4 Contents of Tariff

Every tariff shall contain:

- a. The name of participating carriers.
- b. Such explanatory statements as may be necessary to remove all doubts as to the proper application of rates and rules contained in the tariff.
- c. Rules which govern the application of rates, or proper reference to the tariff(s) containing such rules.

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- d If the same tariff contains rates applicable to the transportation of both property (other than passengers' baggage) and persons such rates shall be stated in separate passenger and property sections of the tariff.
- e. Rates shall be stated in cents or dollars of the United States together with the correct name of the places from and to which they apply, except that rates may be expressed as a fraction or percentage of other rates so stated provided the application of such fraction or percentage is clearly stated.

3.5 Reissues

- a. When a tariff is reissued the new tariff shall bear the next Cal. P.U.C. number in the series and shall specify on its title page the Cal P U C number of the tariff being canceled.
- b. The Commission may direct the reissue of a tariff.

3.6 Amendments

- a A book or pamphlet tariff may be amended by filing a supplement constructed generally in the same manner and arranged in the same order as the tariff being amended, and referring to the page, item or index of the tariff or previous supplement which it amends
- b A loose-leaf tariff may be amended by reproducing the entire page on which the change is being made, and by filing the new page as a consecutively numbered revision of the previous page, e g, First Revised Page 10 A loose-leaf tariff may be amended by supplementing for the purpose of canceling, suspending, or vacating suspension of the tariff as set forth in Rule 5

4 SPECIAL APPLICATION REQUIREMENTS**4.1 Increases**

Rates may not be increased or so altered as to result in an increase except upon specific authority granted by the Commission prior to the taking effect of the increase.

4.2 Authority for Short Notice

- a Except as authorized by Rule 2.6 above, tariffs may be filed on less than 30 days' notice only upon specific authority granted by the Commission.
- b Tariffs filed on less than 30 days' notice under authority of Rule 4.2 shall bear the following statement at the bottom of the title page of each complete tariff or supplement or on each revised page filed separately:
 "Issued under authority of Cal P.U.C. Decision No. _____,"
 or "Issued by authority of Rule 4.2 of General Order No.
 105-A, Permission No _____"

4.3 Application Required

- a. Specific authority, referred to in Rules 4.1 and 4.2, may be requested by submitting an application to the Commission with supporting information.
- b When filing rate increase applications, the applicant air transportation company shall comply with Rule 2.3 of the Commission's Rules of Procedure relating to rate increase applications. When filing applications requesting specific authority referred to in Rules 4.1 and 4.2 the applicant air transportation company shall name in the application and mail a copy thereof to each air transportation company operating a scheduled service between points to which the tariff applies, to the State, when the State is a customer the rates charged to which would be affected by any proposed increase in rates, and to the counties, or the municipal corporations whose citizens would be affected by any proposed increase in rates, and shall name any other parties to whom copies of the application will be mailed, and applicant shall promptly

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notify the Commission of such mailing. The applicant shall also mail copies to such additional parties and within such times as may be designated by the Commission

- c. In lieu of mailing to the State, the counties, or the municipal corporation heremabove indicated, an applicant, within ten days after filing the application, may publish once a notice, in general terms, of any proposed increase in rates, in a newspaper of general circulation in the county or city in which the rate increases are proposed to become effective. Such notice shall advise the State, the counties, and the municipal corporations which may be interested in the application that a copy thereof may be obtained from the applicant upon request. Proof of such publication shall be filed with the Commission at or prior to the opening of such hearing as may be had upon the application.

5 SUSPENSION OR VACATION SUPPLEMENTS**51 Suspension**

Upon receipt of the Commission's order of suspension the air transportation company or agent shall immediately file a supplement stating that the rate is under suspension and may not be used until further notice.

52 Vacation

Upon receipt of the Commission's order of vacation of a suspension order the air transportation company or agent shall immediately file a supplement stating the date on which suspended rates become effective

53 Authority

Suspension and vacation supplements shall bear the following statement at the bottom of the title page

"Issued under authority of Cal P U C Decision No _____"

Section 3—Legal Provisions**6 APPLICATION OF TARIFFS**

No air transportation company shall charge, demand, collect, or receive a different compensation for the transportation of persons or property, or for any service in connection therewith, than the applicable rates specified in its tariff filed and in effect at the time, nor shall any such air transportation company refund or remit in any manner or by any device any portion of the rates so specified, except upon order of the Commission, nor extend to any corporation or person any privilege or facility in the transportation of passengers or property except such as are regularly and uniformly extended to all corporations and persons.

7 FREE OR REDUCED RATES

Air transportation companies may issue or interchange tickets or passes for free or reduced rate transportation to their directors, officers and employees and their immediate families; witnesses and attorneys attending any legal investigation in which any such air transportation company is interested; persons injured in air accidents and physicians and nurses attending such persons, and any person or for any property with the object of providing relief in the case of general epidemic, pestilence or other calamitous visitation. Air transportation companies may issue reduced rate transportation to bona fide ministers of religion, other male or female members of the clergy and traveling secretaries of religious organizations.

8 REASONABLENESS

All rates demanded or received by any air transportation company, or by any two or more air transportation companies, for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such service is unlawful.

9 DISCRIMINATION

No undue or unreasonable discrimination in charges or facilities for transportation shall be made by any air transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State. It shall be unlawful for any air transportation

Rule

company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or routes in the same direction, the shorter being included within the longer distance, or charge any greater compensation as a through rate than the aggregate of the intermediate rates. Provided, however, that upon application to the Commission an air transportation company may, in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of persons or property and the Commission may from time to time prescribe the extent to which such air transportation company may be relieved from the prohibition to charge less for the longer than for the shorter haul. The Commission shall have the power to authorize the issuance of excursion and commutation tickets at special rates.

10 REPARATIONS

When complaint has been made to the Commission concerning any rate of an air transportation company, and the Commission has found, after investigation, that the air transportation company has charged an unreasonable, excessive, or discriminatory amount therefor, the Commission may order that the air transportation company make due reparation to the complainant therefor, with interest from the date of collection if no discrimination will result from such reparation. No order for the payment of reparation upon the ground of unreasonableness shall be made by the Commission in any instance wherein the rate in question has, by formal finding, been declared by the Commission to be reasonable, and no assignment of a reparation claim shall be recognized by the Commission except assignments by operation of law as in cases of death, insanity, bankruptcy, receivership, or order of court.

11 SUSPENSION OF RATES OR RULES

Whenever any tariff, or tariff amendment, stating a rate is filed with the Commission pursuant to Rule 25 or Rule 26 of this General Order rather than pursuant to specific authority from this Commission, the Commission may, either upon complaint or upon its own initiative, at once and if it so orders without answer or other formal pleadings by the interested air transportation company or companies, but upon reasonable notice, enter upon a hearing concerning the propriety of such rate. Pending the hearing and the decision thereon such rate shall not go into effect. The period of suspension of such rate shall not extend more than 120 days beyond the time when it would otherwise go into effect, unless the Commission extends the period of suspension for a further period not exceeding six months. On such hearing the Commission shall establish rates which it finds to be just and reasonable.

Issued by order made at San Francisco, California, this 1st day of December, 1959.

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

By R J PAJALUCH, Secretary

EXHIBIT II

OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, November 4, 1960

HONORABLE REX M. CUNNINGHAM
1558 East Main Street
Ventura, California

Control of Intrastate Air Lines
No 5077

DEAR MR. CUNNINGHAM:

QUESTION

You have requested us to supplement our opinion to you dated June 9, 1960 (Air Transportation Companies No. 3962), in which we discussed the jurisdiction of the Public Utilities Commission over scheduled air transportation in California.

In this connection, you now inquire whether there is any other state agency in California which has any authority to control rates, schedules, or safety of operation of intrastate airlines.

OPINION

In our opinion, there is no such other state agency, although the California Aeronautics Commission has certain limited powers in the field of aeronautics.

ANALYSIS

In our earlier opinion, referred to above, we pointed out that the control of intrastate rates of common carriers by air is subject to the jurisdiction of the California Public Utilities Commission, that air safety regulations of the federal government have occupied that field to the exclusion of state regulations, and that with respect to air schedules, there is nothing now in the California law which gives the Public Utilities Commission regulatory authority.

The only other state agency which has any authority in the field of aeronautics is the State Aeronautics Commission which was created by the State Aeronautics Commission Act (Pt. 1, commencing with Section 21001, of Division 9 of the Public Utilities Code). That commission has certain powers and duties with respect to the encouragement of the development of aeronautics in the State, but it is specifically provided in the act that the State recognizes the authority of the federal government to regulate the operation of aircraft and to control the use of the airways, and that nothing in the act shall be construed to give the Aeronautics Commission the power to regulate and control safety factors in the operation of aircraft or to control the use of the airways (Sec. 21240, P. U. C.). There is nothing in the State Aeronautics Commission Act which purports to give the Aeronautics Commission any authority to control the rates, schedules, or safety of operation of intrastate airlines.

We have found nothing elsewhere in the California statutes or in the Constitution which purports to give any authority over rates, schedules, or safety of operation of intrastate airlines to any other state agency.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel

By ROBERT G. HINSHAW
Deputy Legislative Counsel

HOUSE RESOLUTION NO. 337

BY MR. CHARLES H WILSON

Relative to an Interim Study of the Los Angeles Metropolitan Transit Authority

Resolved by the Assembly of the State of California, That the subject matter of the Los Angeles Metropolitan Transit Authority, including all phases of its operations, the relationship between the Authority and private transit companies operating within the same territory, proposals for modern rapid transit, and all other phases of the transportation problems in the Los Angeles metropolitan area, is assigned to the Committee on Rules for further assignment by it to an appropriate Assembly interim committee, which committee is directed to report to the Assembly on such matter not later than the fifth calendar day of the 1961 Regular Session of the Legislature.

HEARINGS HELD BY SUBCOMMITTEE

A subcommittee of this committee held hearings in Los Angeles on September 28 and 29, 1960, on the subject of proposed changes in the Los Angeles Metropolitan Transit Authority Act.

PERSONS APPEARING AND TESTIFYING BEFORE SUBCOMMITTEE

FRANK ATKINSON, President, South Los Angeles Transportation Company and Atkinson Transportation Company
GEORGE BALLARD, Brotherhood of Railroad Trainmen
MELVIN H. BUNTING, Lee's Auto Stage Lines
ERROL BURNS, Director of Real Estate, Los Angeles Board of Education
W. PAUL BUTLER, President, Riverside Taxicab Company
EARLE WM. BURKE, Councilman, City of Burbank
TALMAGE BURKE, Mayor, City of Alhambra
JAMES O. CARSON, Cross Town Suburban Bus Lines, Inc.
JOHN J. CAYER, General Counsel, Cross Town Suburban Bus Lines, Inc.
HARRY CHESHIRE, JR., General Counsel, Automobile Club of Southern California
ROBERT G. COCKINS, City Attorney, City of Santa Monica
PETER DRAKE, Owner and Manager, Terminal Island Transit Company
A. J. EYRAUD, Chairman, Los Angeles Metropolitan Transit Authority
WILLIAM F. FARELL, Superintendent, Santa Monica Municipal Bus Lines
C. M. GILLISS, Director, Los Angeles Metropolitan Transit Authority
RICHARD J. GLASSCOCK, President, San Bernardino Transit Company
CHARLES K. HACKLER, California Teamsters Legislative Council
WILLIAM H. T. HOLDEN, Society of Professional Engineers
MRS. FAUSTINA N. JOHNSON, Manager, South Los Angeles Chamber of Commerce
PETER JOHNSON, Vice-President, City School Bus System

HENRY E JORDAN, Bureau of Franchises and Public Utilities, City of Long Beach
GERALD KELLY, General Counsel, Los Angeles Metropolitan Transit Authority
WILLIAM A KNIGHT, Executive Vice-President, Tanner Gray Line Motor Tours
ROBERT LANDIER, Manager, San Pedro Motor Bus, Inc
DOMINIC A. MANNINO, Owner, M & M Charter Bus Line
JOHN M. MARTIN, Los Angeles Chamber of Commerce
JOHN E. McCARTHY, Manager, Pasadena Chamber of Commerce and Civic Association
MRS. CLARA McDONALD, President, Patriotic People of U.S.A
IRVAN MENDENHALL, President, Daniel, Mann, Johnson and Mendenhall
CLAUDE MINARD, General Counsel, California Railroad Association
JOHN MUNHOLLAND, Attorney, Long Beach Motor Bus Company
ART NAY, President, California Bus Lines
R. V. RATCHFORD, General Chairman, Brotherhood of Railway Clerks
EMERSON RHYNER, Attorney, State Department of Public Works
CARROLL M. SHAW, International Vice-President, Transportation Union
ROBERT M. SHILLITO, General Manager, Downtown Businessmen's Association of Los Angeles
ROBERT J. SWAN, Long Beach
LELAND J. THOMPSON, City Attorney, City of Riverside
L. E. TIMBERLAKE, Councilman, City of Los Angeles
WILLIS E. URICK, JR., Attorney, Railway Express Agency
WINSTON R. UDEGRAFF, Southern California Representative, League of California Cities
BRUCE WHITED, President, Golden Bear Sightseeing

SCOPE OF SUBCOMMITTEE STUDY

The Los Angeles Metropolitan Transit Authority was created by the Los Angeles Metropolitan Transit Authority Act, passed by the 1957 Legislature. The legislative policy that prompted the adoption of the Act creating the Authority is stated in Section 1.1 of the Public Utilities Code, Appendix I, as follows:

"It is hereby declared to be the policy of the State of California to develop mass rapid transit systems in the various metropolitan areas within the State for the benefit of the people. A necessity exists within Los Angeles County (hereinafter sometimes called "metropolitan area") for such a system. Because of the numerous separate municipal corporations and unincorporated populated areas in the metropolitan area hereinbefore described, only a specially created authority can operate effectively in said metropolitan area. Because of the unique problem presented by that metropolitan area and the facts and circumstances relative to the establishment of a mass rapid transit system therein, the adoption of a special act and the creation of a special authority is required."

Following some two and one-half years of operation, the Los Angeles Metropolitan Transit Authority presented to this committee several proposed changes in the Legislative Act of 1957 which the authority felt necessary to bring about the fulfillment of a mass rapid

transit system as envisioned by the State Legislature. As a part of the justification for these proposed changes, a presentation was made to the committee of a rather extensive study made of all transit systems, to determine what should be built in Los Angeles, where it should be built and how much it would cost.

As to where it should be built, the report recommends four routes which will economically support rapid transit at the present time. These routes are to Santa Monica, Long Beach, San Bernardino and the San Fernando Valley and include 74.9 miles of rapid transit. Four additional rapid transit routes appear to be necessary within the next twenty years. These are to Santa Ana, Inglewood, Pasadena and San Fernando. The eight routes comprise 150 miles of rapid transit.

Of the more than forty different types of transit equipment included in this study, three basic types could be adapted for rapid transit in the Los Angeles metropolitan area. They are: (1) suspended monorail type of construction; (2) saddle bag monorail type of construction; and (3) metro system type of equipment. The metro system appears to be the most economical of the three for Los Angeles installation.

The estimated total cost, including reserves, is \$529,000,000 for what appears to be the most economical, reasonably feasible rapid transit system. It includes two and one-half miles of underground construction, some fifty miles of overhead construction and some twenty miles of surface transportation.

In order to proceed to get a mass rapid transit system located and constructed, the following deletions, additions and amendments to the Los Angeles Metropolitan Transit Authority Act appear to be the most controversial of those requested by the Metropolitan Transit Authority:

1. Section 4.26 be added to the present Act, providing that when any group requires the authority to temporarily or permanently disconnect, remove, relocate or alter any of its facilities for any reason, that the authority be reimbursed for the cost of such relocation.

2. Section 2.7 be amended to authorize the authority to transport express. Upon acquiring predecessor private companies the authority has continued transporting the express shipments which their predecessors handled previously.

3. Section 3.6 be amended deleting the right of the authority to contract with a private corporation for the purpose of operating the system, a power the authority does not desire.

4. Amend Section 3.11 to require the mechanical condition of equipment used by the authority to meet the safety regulations of the Public Utilities Commission, which deletes from the present law the requirement that the operation of the transit facilities by the authority meet the Public Utilities Commission's safety regulations for comparable street railway and bus systems.

5. Amend Section 4.6 to give the authority the right to condemn public property or privately owned public utility property without their consent for rights-of-way. This right is already given to the authority for private property. This amended section would also provide that where property is already dedicated or appropriated for public use it may be condemned and taken by the authority for rights-of-way,

being deemed a more necessary use than the public use to which the property has already been appropriated

6 Amend Section 4 8 to give the authority a right-of-way easement in, upon, over, under or across public streets, highways, freeways and other public places without the necessity of obtaining any permit of any kind or consent of and without the payment of any charge, fee or consideration of any kind to the city, county or state having jurisdiction over such public property.

7. Amend Section 4 21 to permit the authority to negotiate for either a part or all of a publicly or privately owned public utility on terms mutually acceptable to each party The option to sell either a part or all of such a public utility is at the option of the seller The amended section provides that the purchase price shall not exceed the fair market value of the property to be purchased If the sale has not been negotiated, and the authority proposes to establish any mass rapid transit service or system in such manner or form as will substantially divert or reduce the patronage or revenues of the existing system, then a sixty day notice of the proposal shall be given by the authority to the existing system Until the expiration of the sixty day notice, the existing public utility system shall have the sole discretion and option to (1) require the authority to purchase that portion of the existing system affected by the establishment of the proposed system by the authority; or (2) require the authority to purchase all of the existing system of the public utility If the public utility elects the relief described in (1) and (2) above, then within ninety days after notice of such election to the authority, or within ninety days after any litigation as a result of activity under this section, the authority shall notify the public utility involved that it will abandon or has abandoned the proposed service until it has completed the purchase of all or the affected part of the existing system of the public utility.

A provision in the present Act which allows injunctive relief to any public utility whose patronage or revenues are diverted or lessened by an act of the authority, would be deleted by this amendment The approval of the sale, or partial sale, of a publicly owned public utility by the electors of the public corporation owning the public utility will no longer be required under the amendment. The approval by the legislative body of the public corporation owning the public utility is all that would be required for consent of sale to the authority

The proposed amendment would also provide that no publicly owned or privately owned public utility shall establish any mass rapid transit system which will substantially divert or reduce the patronage or revenues of the system operated by the authority Injunctive relief is granted to the authority to stop any violation of this section under this proposed amendment.

8 Section 4 22 be repealed, deleting the permissive requirement that when the authority acquires an existing privately owned system or portion thereof, it may pay to the public corporation concerned property taxes or franchise payments which have heretofore been paid by the public utility acquired.

9. Section 541 be repealed, deleting the requirement that bonds issued under the Los Angeles Metropolitan Transit Authority Act be subject to investigation and certification by the California District Securities Commission to determine whether said bonds are adequately secured and the revenues of the authority sufficient to pay the principal and interest of the bonds.

10. Section 542 be repealed, deleting the authority's right to commence action in Superior Court to determine the right to issue bonds and their validity.

11. Section 611 be repealed, deleting the requirement that the authority not discontinue or abandon transit services on any route of a publicly or privately owned public utility acquired by the authority except upon substitution by the authority of equal services without cost to the taxpayer.

12. Section 11.2 be repealed, deleting a section which would permit the creation of transit districts in certain areas where public transit needs exist but economic engineering studies do not show sufficient income to support financing by the authority's revenue bonds.

13. Sections 21458 and 22500 of the Vehicle Code be amended authorizing the Metropolitan Transit Authority to establish red bus zones for use by authority vehicles only, including establishing bus zones in front of public and private driveways.

Additional recommendations of the authority did not appear to be of a controversial nature, though many public and quasi-public agencies requested more time to review the authority's proposals.

The proposals of the Los Angeles Metropolitan Transit Authority did meet with near unanimous opposition from cities, private bus operators, organizations and others testifying. Many of those testifying requested more time to review the scope of the proposals and the many statements received by the committee appear as exhibits and appendices to the transcript of the hearing held on September 28 and 29 in Los Angeles. All statements are available for inspection in the committee office and are not included in this report due to the limitation of space.

This committee was immensely impressed with the unanimity of agreement of all who testified that the Los Angeles metropolitan area needed an effective mass rapid transit system to supplement its freeway system and needs this system as rapidly as possible. While they disagree with the specific proposals in their present form, they do not disagree with the need for the rapid transit program which the Metropolitan Transit Authority is attempting to formulate.

FINDINGS OF THE SUBCOMMITTEE

1. The subcommittee finds that extensive changes appear to be necessary in the Los Angeles Metropolitan Transit Authority Act of 1957 in order that the authority can fulfill the intent of the 1957 Act.

2. Presently, there is no apparent disagreement among cities, civic organizations and others on the need for mass rapid transit facilities in the Los Angeles metropolitan area.

3. There is extreme disagreement on many of the proposals submitted to this subcommittee by the Los Angeles Metropolitan Transit Au-

thority. The subcommittee feels, however, that while the disagreement appears substantive, it is not unreasonable to assume that compromises of the various areas of disagreement are probable. On November 29, 1960, the Committee Chairman was notified by letter from Mr. C. M. Gilliss, Executive Director of the Los Angeles Metropolitan Transit Authority, that meetings and conferences had been held with many of the cities and other groups who had opposed the proposed changes in the MTA Act and that these meetings and conferences had resulted in some understandings, some compromises and some amendments to the original proposals. In some instances, amendments were mutually agreed upon. In other instances, modifications have been made that partially satisfy the opposition.

4. There has not been adequate time during the interim period for the committee to do the type of thorough, comprehensive study which is necessary to adequately resolve the complex problems facing the citizens of the Los Angeles metropolitan area in the formation of a mass rapid transit system.

RECOMMENDATIONS OF THE SUBCOMMITTEE

Because of the tremendous amount of opposition presented to this committee by various organizations and local government agencies to proposed changes in the Los Angeles Metropolitan Transit Authority Act, as presented to this committee by the authority, the committee feels that even though there is a definite need for a mass rapid transit system in the Los Angeles metropolitan area the committee cannot, without further study, recommend definite legislative changes in the Act.

The committee recommends that the legislative changes requested by the Los Angeles Metropolitan Transit Authority be given further study in order that more accord between all parties concerned may be accomplished before changes in the Los Angeles Metropolitan Transit Authority Act are recommended or enacted.

HOUSE RESOLUTION NO. 358

BY MR CUNNINGHAM AND OTHERS

Relative to a Study of Subscription, Box Office and Pay Television

Resolved by the Assembly of the State of California, That the subject matter of subscription, box office and pay television is assigned to the Committee on Rules for reassignment by it to an appropriate interim committee.

The committee shall study all facts and circumstances relating to the subject of this resolution, including a study of the actual functions of this new, competitive entertainment industry, and its impact upon the economy and the culture of the State of California, as a means of determining the need or the lack of need, the advisability or the inadvisability, for legislation, and shall report its findings and its recommendations to the Legislature not later than the fifth calendar day of the 1961 Regular Session of the Legislature

* * * * *

(The recommendations, summary and findings on the subject of House Resolution No. 358 are printed in a separate report.)

HOUSE RESOLUTION NO. 382

BY MR HAWKINS

Relative to an Interim Committee Study of Railroad Transportation Needs and Policies

WHEREAS, Railroad transportation continues to be a vital factor in the growth of freight and passengers, and

WHEREAS, It is desirable to maintain this service at its highest peak in relationship with other modes of transportation and consistent with the needs of our industries and people; and

WHEREAS, Continued high levels of employment in the railroad industry are highly important to our economy, now therefore, be it

Resolved by the Assembly of the State of California, That the subject matter of this resolution is assigned to the Committee on Rules for further assignment by it to an appropriate Assembly interim committee, which committee is directed to report to the Assembly on such subject matter not later than the fifth day of the 1961 Regular Session of the Legislature

SCOPE OF THE COMMITTEE STUDIES

This study dealt with the subject of railroad employment. This subject was considered preliminarily at the committee meeting of August 24, 1960. At that time Mr. E. A. McMillan, Chairman, California State Legislative Committee, Brotherhood of Railway and Steamship Clerks and member of the Executive Committee, Railroad Brotherhood Legislative Board, was the only witness appearing and testifying on this subject. Mr. McMillan made it clear that his organization would sponsor a similar measure in 1961.

The measure under study provided that no discontinuance of a railroad line or operation would be authorized unless provision is first made protecting employees for a minimum of four years thereafter so that they would be in no worse position with respect to their employment.

Since only one group has testified on this subject and the committee has not had an opportunity to give consideration to possible divergent views, no recommendations can be made at this time.

RECOMMENDATIONS OF THE COMMITTEE

Because of the divergent views on this subject and since the committee has received no demonstrated interest in this subject, having heard only the recommendations of one group, the committee feels that testimony must be received from all parties concerned including industry and agriculture. Therefore, the committee makes no recommendation on this subject at this time.

HOUSE RESOLUTION NO. 386

BY MR. CUNNINGHAM

Relative to an Interim Committee Study of the Regulations of Railroads and Other Utilities by the Public Utilities Commission

Resolved by the Assembly of the State of California, That the subject matter of the regulation of railroads and other utilities under the jurisdiction of the Public Utilities Commission, including but not limited to safety regulations and orders of the Public Utilities Commission, the procedures of the commission in enforcing its regulations, the procedures of the commission in handling complaints, the methods and procedures of investigation, hearings and findings and the methods of reporting or publishing thereof, is assigned to the Committee on Rules for reassignment by it to an appropriate interim committee, which committee shall report to the Assembly not later than the fifth calendar day of the 1961 Regular Session of the Legislature

HEARINGS AND FIELD STUDIES HELD BY COMMITTEE

Two hearings and a field trip were conducted by the committee in its study of the subject matter of House Resolution No 386. Hearings were held in San Francisco on September 24, 1959 and in Los Angeles on August 24, 1960. A field study was conducted on August 25, 1960 at the Taylor Yard of the Southern Pacific Railroad Company and the Hobart Yard of the Santa Fe Railroad Company, both in the Los Angeles area, where the committee observed working conditions and actual operations of these railroads.

PERSONS APPEARING AND TESTIFYING BEFORE COMMITTEE

WILLIAM M BENNETT, Chief Counsel, California Public Utilities Commission
PATRICK D BURKE, Angel City Lodge No 806, Brotherhood of Railway Carmen of America
RODERICK B CASSIDY, Assistant Chief Counsel, California Public Utilities Commission
WILLIAM V ELLIS, Chairman, California State Legislative Board, Brotherhood of Locomotive Firemen and Enginemen
C M GIBBENS, General Vice-President, Brotherhood of Railway Carmen of America
JAMES E HOWE, Chairman, California Legislative Board, Brotherhood of Railroad Trainmen
EVERETT C McKEAGE, President, California Public Utilities Commission
E A McMILLAN, Chairman, California State Legislative Committee, Brotherhood of Railway and Steamship Clerks
E F McNAUGHTON, Director, Utilities Division, California Public Utilities Commission

G R MITCHELL, Chairman, California State Legislative Committee, Brotherhood of Locomotive Engineers

JAMES W MULGREW, Director, Transportation Division, California Public Utilities Commission

O K. PRENTISS, Legislative Representative, Order of Railway Conductors and Brakemen

IRVING SARNOFF, Lodge No 601, Brotherhood of Railway Carmen of America

ROBERT WALKER, Lodge No 357, Brotherhood of Railway Carmen of America

REASON FOR INTRODUCTION OF HOUSE RESOLUTION NO. 386

During the 1959 Regular Session of the Legislature several Assembly Bills relating to the health and safety of railroad employees were referred to the Assembly Public Utilities and Corporations Committee. These bills caused much controversy and confusion. The proponents of the measures contended such legislation was necessary to cure specific problems relating to railroad employees' health and safety.

The opponents of the bills contended that legislation was unnecessary and that the California Public Utilities Commission had adequate power under the State Constitution and existing law to correct any situation by general safety orders.

Due to the wide area of controversy and the confusion surrounding these Assembly Bills it was recommended that they be sent to the Assembly Rules Committee in order that the subject matters could be made a matter of interim study. Subsequently, House Resolution No 386 was introduced to cover the subject matter of all Assembly Bills relative to health and safety of railroad employees.

FACTUAL INVESTIGATION OF HOUSE RESOLUTION NO. 386

At the first hearing held on this subject on September 24, 1959, testimony given by the Public Utilities Commission representatives indicated to the committee that the primary safety function is to assure that operations are conducted in a manner which will prevent accidents. For this purpose, regular programs have been established for the study and review of carrier operations. Complaints received by the commission, both formal and informal, aid and supplement the other work and contribute to the overall safety program.

An essential part of regulatory safety work, where it is necessary or advisable is to establish rules and regulations of general application. With this framework of basic rules all concerned are aware of the standards which must be met and the procedures which must be followed to achieve safety of operations and to avoid accidents.

These basic rules have been developed over the years and have been promulgated in a series of commission directives described as general orders. These general orders are based on extensive studies by commission staff members, by carrier and employee representatives and by others involved in safety work.

In addition to railroad safety activities of the commission staff in connection with promulgation of general orders, specific studies are made by the staff when such studies are required or particular problems

arise. During the past five years the staff has studied the following subjects:

1. Carrier operating rules.
2. Development and use of 2-way radio in train operations
3. The performance of train and engine crews
4. Tests of block signal indications
5. Installation of walks and handrails on bridges and trestles
6. Prevention and detection of railroad car hot boxes on freight car equipment
7. Ill effects from diesel locomotive exhaust fumes
8. Ill effects from dust of locomotive sanders.
9. Adequacy of electric lighting facilities in cabooses.
10. Adequacy of locomotive headlights
11. Ability of locomotive front ends to withstand impact
12. Installation and maintenance of locker rooms
13. Installation of fresh pure drinking water in locomotives and cabooses
14. Adequacy under full crew law of train crews to safely perform their duties
15. Installation of mufflers on diesel locomotives to reduce noise in populated areas
16. Blocking of public highways and streets by freight trains
17. Installation and maintenance of railroad wayside signs.
18. Working conditions and facilities for railroad train dispatchers.
19. Installation and maintenance of diesel locomotive inspection facilities
20. Maintenance of train indicator boxes on locomotives.

In addition the commission staff investigates informal complaints made to the commission. The evidence disclosed that any person might institute an investigation by the commission staff by the simple process of placing his complaint in a letter. The informal complaints are handled first of all at staff level and the procedure is to make an investigation in the field of each informal complaint. Usually in the case of complaints filed by the railroad brotherhoods, both the brotherhoods and the carriers are contacted during the course of the investigation in an effort to bring about an area of agreement. Sometimes it is found that the complaint is fully justified and the railroad is perfectly willing to remove the cause of the complaint. More often the staff finds that the matter is one which must be compromised and an endeavor is made to bring about a satisfactory agreement between the differing parties. In some cases the staff concludes the complaint is unwarranted.

In those instances the complainant is so advised and he then has the privilege of filing a formal complaint.

The commission staff has no authority to implement its own decisions. If the railroad, for example, does not agree with the settlement suggested by the staff, then the staff has to go to the commission and request that it institute a formal order of investigation. If this is done there is a public hearing at which time the staff and the complainant present evidence and the railroad has the opportunity to present evidence on its behalf.

When informal complaints are received and where the allegations warrant it, a conference or discussion is held with the complainant or the carrier, or both, to determine the best method of proceeding. Staff investigation is then made, and upon a full review of the facts, the complainant and the carrier are advised of staff conclusions or recommendations. Either has the right, under commission procedure, to go forward formally if unwilling to accept the informal disposition of the matter.

SUMMARY OF FORMAL AND INFORMAL COMPLAINTS

An exhibit filed with the committee by the commission representative summarized the informal complaints as to railroad operating matters for five fiscal year periods ending June 30, 1959. There were 408 such complaints during that period. Following is a summary of these informal complaints:

<i>Nature of complaint</i>	<i>Total</i>	<i>Resolved</i>	<i>Unwarranted</i>	<i>Pending</i>
Full Crew Law.....	45	36	9	0
Railroad equipment.....	31	26	4	1
Locomotive equipment.....	21	14	7	0
Car loading and cleaning of dunnage.....	7	6	0	1
Train operations.....	81	55	22	4
Sanitary and health conditions.....	43	39	3	1
Impaired clearances and unsafe conditions.....	160	150	1	9
Blocking of crossings.....	13	12	0	1
Excessive train noises.....	7	6	0	1

The committee requested that the brotherhoods file informal complaints with the Public Utilities Commission concerning unsanitary or unsafe conditions at the first hearing held by the committee. At that time it was stated there would be a subsequent hearing at which time the committee would thoroughly review the action of the commission on these informal complaints. At the second hearing held the commission representative submitted a summary which the committee feels explains fully commission action on complaints during this period of time. (See Exhibit I)

During a 10-year period ending June 30, 1959, the Public Utilities Commission on its own motion instituted formal proceedings on 13 occasions. Of these 13 formal proceedings, 12 concerned railroad employees and one concerned excessive noise.

Also during the 10-year period ending June 30, 1959, there were 10 formal complaints against the railroads filed with the commission.

Seven of these were filed by the railroad brotherhoods. One of these complaints was handled informally by the staff, three of the cases were dismissed and in three cases changes in operation were ordered.

At the second hearing held the commission representative testified as to the two formal complaints which the commission had instituted on its own motion after agreement could not be reached on the staff level on informal complaints. These related to protective shelters or covering over railroad repair tracks and violations of General Order 26-D relating to open top cars with lading extending laterally in excess of five feet, five inches from center line of such car and the requirements of how these cars should be blocked together.

On October 31, 1960, Commission President Everett C. McKeage notified the committee by letter that on October 25, 1960, the commission had instituted a formal investigation on the subject of equipment, maintenance and operation of cabooses by railroad corporations since the staff had been unable to resolve these questions entirely under informal procedure.

GRADE CROSSING PROTECTION

The committee was informed by a representative of the commission and a representative of one of the railroad brotherhoods that because of legislation passed by the Legislature and through the activities of the Public Utilities Commission grade crossing accidents in July, 1959 were the lowest that they had been in over thirty years.

In 1953 the Legislature provided a fund of \$500,000 to be administered by the Public Utilities Commission to assist cities and counties in installing grade crossing protection devices. The city or county and the railroad involved arrange for the installation and financing of the protection device with commission approval. The city or county is then reimbursed up to one-half its share from the grade crossing protection fund.

Since 1953 the Legislature has supplemented this fund and the total amount provided up to September, 1959 was \$1,150,000.

SUMMARY OF FIELD INVESTIGATIONS

On August 25, 1960, the committee made an on-the-spot inspection of two railroad yards in the Los Angeles area. The Taylor yard, operated by the Southern Pacific, was the first yard visited. At this yard the committee was shown the repair tracks, humping operation, locker facilities and the caboose pool.

The repair tracks at this location were covered and were in a clean condition, taking into consideration the type of work being performed there. However, there were freight cars being worked on which were not under the covered portion of the tracks. At the time of this field trip the weather was such that no hardship would result from lack of overhead cover.

The "humping operation" at the Taylor yard was extremely interesting to the committee. The freight cars are switched on a track that

has a raised section. When a freight car, or several freight cars, that are to be sorted reach the summit of the raised section of track they are manually disconnected from the train and start down the incline. As the cars start down the incline they are switched on to any of over twenty-five tracks that are used in sorting the cars. This switching is done electronically from towers situated along the tracks on the downhill incline. Each tower can switch on to one of four tracks. Therefore, the first tower will switch on to one of the four tracks and the tower below will do likewise until the car is placed on the proper final track. The tower operator can also slow the speed of the car by an electronically operated braking system. The tower operator receives his directions from a central control by means of an intercommunication system. The committee was informed that the Taylor yard handles between 1,200 and 1,500 freight cars a day.

At the Taylor yard the committee also inspected the caboose pool. The various railroad companies, in order to modernize cabooses, have a pool, and cabooses from this pool can be used by any company. The cabooses inspected by the committee had communication systems, lavatories, drinking water systems using bottled water and posted safety regulations.

At the Hobart yard, which is operated by the Santa Fe Railroad Company, the committee saw the truck "piggy-back" operation. Trucking companies using this system deliver their loaded semitrailers to a parking area. From the parking area a Santa Fe truck-tractor takes the semitrailer to a loading dock which has four tracks where these trailers are loaded and secured on special freight cars by Santa Fe employees. When the trailer reaches its destination the process is reversed and the trucking company picks up the semitrailer from a parking area at the point of destination. The committee was informed that the "piggy-back" operation was highly successful and that Santa Fe intended to expand their facilities at the Hobart yard.

At the Hobart yard the committee also saw locker rooms, covered repair tracks, an installation for washing tank cars and the switching system used in this yard. All switching in this yard is done manually, that is by trainmen who ride the trains, make the disconnection and also throw the switches. However, the operation is controlled by a central tower and public address system. The Hobart yard handles between 600 and 700 freight cars a day.

FINDINGS OF THE COMMITTEE

1 That there is adequate jurisdiction of operating employees provided by law and vested in the California Public Utilities Commission.

2. That the adoption of special legislation on individual items relating to matters of health and safety rather than aiding may well impair the jurisdiction presently vested in the commission.

3. That there is adequate staff in the commission to process complaints to protect the health and safety of operating railroad employees.

4 That the method of making complaints is simple and readily available and that the commission has shown by past activity that such complaints will receive immediate attention.

RECOMMENDATIONS OF THE COMMITTEE

The committee directed the Public Utilities Commission to advise it of their disposition of all complaints received from the period September 24, 1959, which was the date of the first hearing on the subject, to June 30, 1960. The committee was informed that the commission had received a total of 109 informal complaints. All but six of these were received from the railroad brotherhoods. Of the 109 complaints, 86 had been corrected by negotiation of the commission's staff, 11 were under negotiation and investigation, 6 were found to be unwarranted and the commission, on its own motion, has instigated 3 formal proceedings.

The committee, by virtue of their study on this subject, was able to bring forth for the first time the procedures followed by the Public Utilities Commission in the processing of formal and informal complaints. The committee believes that the procedure of handling these complaints is adequate at the present time. However, it will continue to maintain its interest in the protection of the employees of railroads.

EXHIBIT I

August 18, 1960

**California Public Utilities Commission, Transportation Division—Summary
of Informal Complaints—Railroad Operating Matters for the
Fiscal Year Ended June 30, 1960, Including Disposition**

(See Page 48 for Key to Abbreviations)

<i>File</i>	<i>Date</i>	<i>Complainant</i>	<i>Nature of complaint</i>	<i>Disposition</i>
005	7/27/59	BRCA vs SP Co -----	Alleged need for protective shelter over repair tracks and other health and safety matters at Watsonville Jet.	Shelter question being handled by C 6452 All other matters resolved.
005	7/31/59	BRCA vs SP Co -----	Alleged need for protective shelter over repair tracks and other health and safety matters at S F Terminal	Shelter question being handled by C 6452 All other matters resolved.
005	8/ 5/59	BRCA vs SP Co -----	Alleged need for protective shelter over repair tracks and other health and safety matters at Fresno	All conditions resolved except question of shelter which is being handled by C. 6452.
GO 26-D	7/ 6/59	BRT vs SP Co -----	Alleged violation of GO 26-D in the movement of excess dimension loads on the Shasta Division	Carrier has issued new instructions to its employees Periodic check of records disclosed no further violations
GO 26-D	1/ 4/60	BRT vs WPRR -----	Alleged violation of GO 26-D in the movement of excess width loads from Nevada into California	Carrier has issued new instructions to its employees Periodic check of records disclosed no additional violations
GO 26-D	1/29/60	BRT vs SP Co -----	Material stored over edge of platform and track littered with debris at Burlingame	Clearance line painted on platform and debris cleaned up daily
GO 26-D/618	2/ 3/60	NWP vs Hanson Pac Lbi Co, Fortuna, California -----	Industry extended its track without approval of carrier impairing side clearance along utility poles by 1'-6"	Poles moved to lawful clearances before carrier operated adjacent to them

123	12/ 9/59	Joseph Breck vs CCT Co. and STERR	Alleged noise nuisance created by mechanical reefers left running near residence and CCT performing switching operation in area during night hours	Numerous changes in the operations are presently being made to curtail night operation in the nuisance area.
123-1	6/10/60	Staff survey re ATSF	Unsanitary watering facilities for passenger cars at Needles and Bakersfield	Carrier is preparing plans for a new dispensing system.
124	4/ 8/60	BRT vs SP Co	Alleged violation Blue Flag Rule Carrier had ordered carmen to Blue Flag head-end only while making air test on passenger trains at Sacramento	Carrier agreed to provide protection as required by operating rules
140	11/ 2/59	Staff survey re ABLRR	Unsafe tallow unloading facilities in Alameda	New facilities installed conforming to PUC standard at a new location eliminating hazards
173	7/29/59	ORCB vs. SP Co.	Aisles on SP Co "Lark" and "Daylight" trains blocked with baggage.	Instructions issued to insure proper storage of all unchecked baggage
173	8/15/59	ORCB vs. SP. Co.	Alleged violation of Full Crew Law in the use of brakemen at Logan on their Coast Division	Third brakeman to be used on crew of trains performing work at this point
173	10/14/59	BRT vs ATSF	Alleged violation Full Crew Law in the use of brakemen between San Bernardino and San Diego	Third brakeman assigned to all trains making three or more pickups or set-outs en route.
173	10/14/59	BLE vs. CCT Co.	Alleged violation Full Crew Law in the use of firemen	Full Crew Law does not apply as less than four trains a day operated each way
173	2/ 8/60	ORCB vs. SP Co.	Alleged violation State Labor Code in the use of baggagemen on passenger trains.	Could not be resolved informally. Commission instituted formal investigation (C 6542).

Informal Complaints—Railroad Operating Matters—Continued

<i>File</i>	<i>Date</i>	<i>Complainant</i>	<i>Nature of complaint</i>	<i>Disposition</i>
173	5/31/60	BRT vs. CWRR -----	Alleged violation Full Crew Law in the use of brakemen when additional passenger trains are operated during summer months.	Type of equipment involved in these passenger trains exempt from provision of State Labor Code.
173	6/ 6/60	BLFE vs. ATSF -----	Alleged violation of Labor Code regarding unqualified person operating locomotive.	Preliminary investigation discloses complaint involves training program rather than violation of law.
IC 71576 C. 6403	1/11/60	J. Vinton vs. NWP-----	Rancher requests that an adequate right of way fence be built between his property and the railroad.	Formal case resulted when carrier refused to install fence. Case dismissed without prejudice at request of complainant.
IC 71714	6/ 3/59	BLFE vs. ATSF-----	Alleged violations of carrier operating rules re the inspection of locomotives at Needles	Complaint not justified. Carrier rules adequate and complied with.
IC 71715	7/ 3/59 1/28/60	BRT vs SP Co -----	Alleged improper maintenance and unsanitary condition of certain passenger cars on trains between S. F. and L. A.	Extensive repairs made to cars to correct the conditions involved in complaint.
IC 71716	7/ 3/59	ORCB vs. SMVRR -----	Alleged hazardous condition of beet dumping trestle at Betteravia, Calif.	Satisfactory repairs made.
IC 71717	7/ 3/59	ORCB vs UPRR -----	Blocking of vestibules with baggage on Train No 116.	Facilities provided to properly contain baggage.
IC 71718	7/ 3/59	ORCB vs. SP CO-----	Excessive lateral motion and rough riding on Pullman Car "Hemlock Falls"	Extensive repairs made to car.
IC 71731	7/14/59	BRCA vs. PFE Co-----	Alleged need for improvement of car repair shelters, PFE shops, Roseville.	Question of shelter over car repair tracks being handled by C. 6452.

IC 71739	7/14/59	BRT vs SP Co.	Excessive growth of weeds at Napa Jet, Lombard, etc, on Western Division	Conditions corrected.
IC 71743	7/22/59	BRT vs SP Co.	Inadequate toepath at various spurs around City of Industry, Los Angeles area	Carrier is progressively making corrections, now 90 percent completed.
IC 71744	7/20/59	BRT vs UPRR	Alleged numerous unsafe walking conditions within UP Terminal at Los Angeles	Conditions corrected
IC 71748	7/30/59	BLE vs SP Co	Alleged SP Co has installed "S" (Station 1 mile sign) boards at distances greater or less than 1 mile from stations	Conferences between the carrier representatives and the Brotherhoods are being held to reach agreements as to proper location of signs
IC 71768	8/19/59	BLFE vs ATSF	Alleged unsanitary drinking water on engines between Barstow and Bakersfield	Water source and method of handling changed Containers steam cleaned after each use
IC 71769	8/18/59	BRT vs SP Co	Alleged failure to properly light and maintain switch lights in Guadalupe Yard on the Coast Division.	Carrier agreed to relight and maintain switch lights.
IC 71772	8/20/59	Rich L. Rose, Geyserville vs NWP	Excessive blocking of road crossing at Geyserville	Practice discontinued.
IC 71774	8/21/59	BLFE vs. SP Co	Alleged operation of Train No 51, "San Joaquin Daylight", on 6/23/59 with defective locomotive whistle	Complaint not justified
IC 71787	8/31/59	BLFE vs CWR	Alleged violation of State Labor Code in the promotion of enginemen	Complaint not justified
IC 71788	8/23/60	BLFE vs SP Co	Alleged that terminal air brake tests not properly made at Roseville Yard on the Sacramento Division	Carrier employed 24 additional carmen and enforced terminal test regulations

Informal Complaints—Railroad Operating Matters—Continued

<i>File</i>	<i>Date</i>	<i>Complainant</i>	<i>Nature of complaint</i>	<i>Disposition</i>
IC 71796	9/10/59 6/28/60	BRT vs. SP Co -----	Alleged poor maintenance of cabooses and ground throw switches, and poor footing along certain industry tracks on the Coast Division	All conditions corrected
IC 71797	9/11/59	BRCA vs WPRR	Unsatisfactory condition at coach yard in Oakland	Health and safety items satisfactorily resolved Shelter question being handled by C 6452
IC 71804	11/15/59	BRCA vs SP Co -----	Alleged inadequate facilities in shop area at Sacramento	Question of shelter being handled by C. 6452 All other matters satisfactorily resolved
IC 71808	9/22/59	BRCA vs. SP Co -----	Alleged inadequate and unsafe facilities at Los Angeles general shops.	Question of shelter being handled by C 6452 All other matters satisfactorily resolved
IC 71812	9/24/59	BRCA vs. SP Co -----	Unsafe and unhealthy conditions at Bayshore car repair shops due to lack of protective shelter, poor drainage, etc.	All matters resolved, except question of shelter which is being handled by C 6452.
IC 71822	10/ 2/59	SP Co. conductor vs. SP Co. -----	Alleged unsafe conditions along tracks at Hollister on Coast Division	Conditions corrected.
IC 71825	10/ 2/59	R. E. Koski, Martinez vs. SP Co. -----	Excessive blocking of Ferry Street in Martinez, Western Division.	Employees instructed to comply with operating rules.
IC 71829	10/26/59	BRT vs. UPRR -----	Alleged unsafe conditions at North Long Beach.	Corrected.
IC 71833	10/13/59	BRT vs. SP Co -----	Excessive growth of weeds at Newhall and Pacoma on Los Angeles Division.	Weeds removed.
IC 71856	10/23/59	BRT vs ATSF -----	Alleged inadequate sanitary facilities on head end cars of certain passenger trains	Carrier agreed to use cars which are properly equipped.

IC 71870	11/ 4/59	BRCA vs WPRR	-----Alleged poor drainage along car repair tracks at Stockton and inadequate protection from weather	Drainage problem resolved. Matter of shelter being handled by C. 0452
IC 71872	11/ 5/59	BLFE vs. SP Co	-----Alleged carrier had removed targets and reflectorized switch lamps from main line switches at Guadalupe and San Luis Obispo	Lamps and targets replaced
IC 71873	11/ 4/59	BLFE vs SMVRR	-----Alleged smoke and dust from beet pulp dehydrating plant at Betteravia creates unsafe and unhealthy conditions	Industry agreed to provide equipment to correct conditions
IC 71876	11/ 6/59	ORCB vs SP Co.	-----Alleged movement of bad order cars out of Dunsmuir yard to other terminals	Operations found to conform to requirements as to the movement of cars with defective safety appliances. Carrier unwilling to make any change
IC 71877	11/ 6/59	ORCB vs SP Co.	-----Alleged that SP Co cars assigned to wood chip service on NWP have defective air release rods rendering air brakes inoperative	Proper maintenance program established
IC 71880	11/13/59	BRT vs. SP Co	-----Alleged unsafe footing conditions at Niles, Milpitas and Napa Jet on the Western Division	80 percent of items resolved. Remaining items being corrected
IC 71886	11/20/59	BRT vs. WPRR	-----Alleged that unsafe and obsolete cabooses are in service between Oroville and Oakland	Carrier plans to extend the pooling of cabooses which will make more satisfactory cabooses available.
IC 71887	11/23/59	BRT vs. SP Co	-----Alleged violation of GO 106 Caboose 62S used on Shasta Division without toilet facilities.	Remedial action taken to prevent recurrence
IC 71888	11/20/59	BRT vs. SP Co	-----Alleged unsafe conditions along certain tracks at San Carlos and Redwood City on Coast Division	90 percent of the conditions resolved. Remaining conditions being corrected

Informal Complaints—Railroad Operating Matters—Continued

<i>File</i>	<i>Date</i>	<i>Complainant</i>	<i>Nature of complaint</i>	<i>Disposition</i>
IC 71890	11/20/59	BRT vs. SP Co.	Alleged SP passenger cars 2412, 2413 and 2951 not properly maintained resulting in poor riding quality.	Cars taken out of service, shopped and conditions corrected
IC 71897	11/30/59	BTR vs. SP Co.	Alleged caboose 523 not in fit condition for safe occupancy.	Caboose removed from service
IC 71919	1/11/60	BRT vs. ATSF	Alleged hazardous and unhealthy conditions at certain places in Richmond Terminal area, San Francisco Division	95 percent resolved Remaining conditions being corrected
IC 71920	1/11/60	BRT vs. SP Co.	Alleged unsafe operations while switching Monolith Cement Plant on San Joaquin Division	Conditions corrected
IC 71921	1/12/60	BRT vs. SP Co.	Alleged health hazard to crew from exhaust fumes and dust from diesel engines and sanders when helpers placed directly ahead of caboose on trains between Bakersfield and Mojave	Previous comprehensive study made on Sacramento Division under more adverse conditions disclosed no health hazards Complaint not justified
IC 71922	1/13/60	ORCB vs. NWP	Alleged unsafe operation in the use of unattended red flag	Investigation disclosed complaint not justified
IC 71926	1/22/60	BLE vs. SP Co.	Alleged that carrier is removing switch lights from main line switches—San Joaquin Division.	Investigation disclosed complaint not justified
IC 71927	1/22/60	BLE vs. SP Co.	Alleged that carrier has refused to assign herder for passenger engine movements from L A Union Station to Alhambra roundhouse	Herders reassigned

IC 71938	3/ 8/60	BRT vs SP Co.	-----	Alleged unsafe operation involving the use of helper engine sanders on mountain district of San Joaquin Division. Ilmon passing track power switch creating a false signal indication	Ilmon siding extended to hold normal length train Sanders checked and flow adjusted and rule preventing use of sander over power switches enforced.
IC 71947	2/16/60	BRT vs WPRR	-----	Alleged unsafe footing conditions along industry tracks between San Leandro and Hayward at Milpitas Also dunnage left on plasterboard cars.	All conditions corrected except the underfoot conditions at Milpitas WP-SP interchange tracks Milpitas conditions in process of correction
IC 71952	2/29/60	Joe D'Amico, Sacramento vs SNRY	-----	Alleged that the carrier was using street in residential area to switch trains during night hours	Changes in the operations have been made to curtail the switching during night hours Track layout changes under study
IC 71954	3/ 2/60	BRT vs SP Co.	-----	Alleged that the carrier has removed all oil lamps and reflector targets from main line and crossover switches Millbrae to Sunnyvale on Coast Division.	Conditions corrected.
IC 71958	3/ 7/60	BRT vs ATSF	-----	Alleged improper repair and maintenance of toilet facilities on Los Angeles Division freight engines	Program and inspection set up to eliminate cause for complaint.
IC 71964	3/17/60	BRT vs. SNRY	-----	Alleged unsafe conditions at various locations and the uncontrolled growth of willows along Colusa and Holland Branches	95 per cent resolved. Remaining conditions being corrected.
IC 71969	3/25/60	BLE vs. WPRR	-----	Alleged unsafe operation involving movement of passenger equipment in Oakland Yard	Conditions corrected.
IC 71972	4/ 5/60	BRT vs. SP Co	-----	Alleged unsafe operation of "piggy-back" auto cars directly ahead of caboose.	More substantial method of securing cars in racks devised.

Informal Complaints—Railroad Operating Matters—Continued

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<i>File</i>	<i>Date</i>	<i>Complainant</i>	<i>Nature of complaint</i>	<i>Disposition</i>
IC 71977	4/12/60	BRT vs WPRR-----	Alleged excessive growth of brush and tree limbs and poor footing along track between Portola and Osoville	75 per cent corrected. Remaining conditions being corrected.
IC 71978	4/14/60	BRT vs SP Co.-----	Alleged unsafe operating conditions involving excessive growth of weeds and lack of maintenance on switch stands in Lompoc Area on Coast Division.	75 per cent corrected. Remaining conditions being corrected
IC 71981	4/14/60	BRT vs. SP Co.-----	Alleged hazardous conditions due to lack of maintenance and excessive growth of weeds at certain stations—Coast Division	50 per cent corrected. Remaining conditions being corrected.
IC 71983	4/12/60	SUNA vs. SP Co.-----	Alleged that power switch boxes create tripping hazard at Dayton Tower in Los Angeles	Carrier covered the switch boxes.
IC 71988	4/19/60	BLFE vs. SP Co.-----	Alleged improper use of train radio in yards.	Instructions issued to yardmasters outlining permitted uses for radios
IC 71989	4/19/60	BLFE vs. SP Co.-----	Alleged that locomotives not properly supplied with first aid equipment	Equipment supplied.
IC 72004	4/22/60	BLFE vs. ATSF-----	Alleged issuance of verbal instructions by local official contrary to timetable bulletins involving use of retainers between San Bernardino and Victorville	Conditions corrected
IC 72005	4/27/60	BRT vs SP Co-----	Alleged that empty flatcars operate without steel strapping and dunnage being removed—Watsonville Junction and San Jose	Conditions corrected.
IC 72011	5/ 2/60	BLE vs SP Co.-----	Alleged violations of Blue Flag Rule at Oakland and Los Angeles	Conditions corrected

REPORT ON PUBLIC UTILITIES AND CORPORATIONS

IC 72012	5/ 2/60	BLE vs. ATSF-----	Alleged violation of Blue Flag Rule at Richmond, Bakersfield and Los Angeles.	Conditions corrected.
IC 72013	5/ 2/60	BLE vs. SP Co.-----	Alleged removal of switch lamps at Edison and Bakersfield Yard on San Joaquin Division.	Carrier reinstalled oil lamps on certain switches and installed targets on others.
IC 72014	5/ 2/60	BLE vs. SDAE -----	Allege that locomotive sanding facilities at El Centro are such that they result in hazard to firemen.	Conditions corrected.
IC 72015	5/ 2/60	BLE vs. SDAE -----	Alleged reduction in carmen at San Diego has resulted in improper air brake tests and violations of Blue Flag Rule.	Further handling with carrier necessary
IC 72016	5/ 2/60	BLE vs. SP Co. -----	Alleged dirty engine cabs and motor compartments on engines traded to SDAE at El Centro.	Condition corrected.
IC 72017	5/ 2/60	BLE vs. SDAE -----	Alleged improper maintenance of engine whistles and bells resulting in failures en route.	Preliminary investigation discloses improper maintenance not widespread. Further handling with carrier indicated
IC 72018	5/ 2/60	BLE vs. ATSF -----	Allege that brakeman struck by apurtenance which fell from "cradle" car loaded with aircraft fuselages at Chula Vista	Steps taken by aircraft plant to improve securing method and prevent recurrence
IC 72019	5/ 2/60	BLE vs. SP Co. -----	Alleged that switch locks and/or hooks are missing from numerous switches in Dunsmuir Yard.	Locks or hooks replaced where missing
IC 72020	5/ 2/60	BLE vs. SP Co. -----	Alleged that switch lights on yard track switches and targets on round-house lead at Dunsmuir should be replaced	Derail and yard switch stands equipped with reflectorized red targets.

Informal Complaints—Railroad Operating Matters—Continued

<i>File</i>	<i>Date</i>	<i>Complainant</i>	<i>Nature of complaint</i>	<i>Disposition</i>
IC 72021	5/ 2/60	BLE vs. SP Co. -----	Alleged unsafe operating condition in certain localities where switch locks are left unlocked and lock hanging by chains and request the replacement of switch lamps or green targets in certain areas.	Corrective measures taken.
IC 72022	5/ 2/60	BLE vs. PFE -----	Alleged that cars being iced at Roseville, Bakersfield and San Diego not properly blue flagged.	Conditions corrected.
IC 72023	5/ 2/60	BLE vs. SP Co. -----	Alleged unsafe operating conditions created by absence of switch locks on drill tracks adjacent to main line in Oakland, and from Emeryville to San Pablo.	Switch locks installed on some switches and hooks on all others.
IC 72024	5/ 2/60	BLE vs. SP Co. -----	Alleged violation in use of radio to move trains.	Conditions corrected
IC 72028	5/ 3/60	BRT vs. SP Co. -----	Alleged uncontrolled growth of weeds on Friant Branch, San Joaquin Division.	General cleanup in progress 85 percent completed.
IC 72027	5/ 3/60	BRT vs. SP Co. -----	Alleged hazard caused by diamond shaped switch targets.	Carrier rounded off sharp corners of targets.
IC 72032	5/ 7/60	SUNA vs. WPRR -----	Alleged inadequate clearance and other unsafe conditions along several tracks in San Francisco.	All conditions except the parking of automobiles have been corrected. City of San Francisco issuing citations.
IC 72045	6/ 3/60	BRT vs. ATSF -----	Hazardous underfoot conditions and impaired clearances along certain tracks at National City-Los Angeles Division.	Corrective action in progress.

IC 72047	6/ 3/60	ORCB vs. SP Co. -----	Alleged unsafe and improper handling of box car damaged in wreck near Fresno.	Complaint not justified.
IC 72050	6/ 2/60	Al Griffen, Stockton vs SP Co -----	Alleged that driveway to his property blocked by cars left standing on track in middle of street	Changes made in operations by the carrier
IC 72058	6/13/60	BRT vs. SP Co. -----	Alleged excessive growth of weeds on interchange tracks at Permanente Cement Plant, Coast Division.	Industry is in the process of cleaning area.
IC 72059	6/13/60	BRT vs SP Co -----	Alleged unsafe footing conditions at certain stations on Coast Division	Carrier has assigned crews to make corrections
IC 72060	6/17/60	BLE vs UPRR -----	Alleged hazardous conditions at waste material plant in Los Angeles.	Change in methods will be made which will correct conditions.
IC 72062	6/ 3/60	ORCB vs. SP Co. -----	Alleged excessive lateral motion and rough riding of certain passenger cars caused discomfort to passengers	Carrier removed cars from service and made necessary repairs
IC 72068	6/27/60	BLFE vs. SP Co. -----	Alleged that use of "cobra" type brake shoes increased stopping distance.	Complaint not justified.
IC 72072	6/27/60	BLFE vs SP Co. -----	Alleged unsafe operating conditions at Bays involving conflicting signal indications on diverging routes.	Carrier removed signals and issued appropriate instructions.
IC 72077	6/30/60	BRT vs SP Co. -----	Alleged sleeping cars at San Jose inadequate, in poor state of repair and not properly cleaned	Under investigation
IC 72079	6/30/60	BLE vs. SP Co. -----	Alleged that block signal at Ravenna on San Joaquin Division obscured from view by earth bank	Under investigation.
IC 72080	6/30/60	BLE vs. SP Co. -----	Alleged that block signal P 4297 near Ravenna on San Joaquin Division blocked from view by tree branches.	Under investigation

Informal Complaints—Railroad Operating Matters—Continued

<i>File</i>	<i>Date</i>	<i>Complainant</i>	<i>Nature of complaint</i>	<i>Disposition</i>
IC 72081	6/30/60	BLE vs. SP Co.	Alleged that view of train order signal at Famoso on San Joaquin Division is obstructed by Highway 99 overpass.	Complaint not justified.
IC 72082	6/30/60	BLE vs. SP Co.	Alleged that interlocking signal leaving LAUPT hard to see in early morning hours when sun is behind it	Under investigation

Disposition of Informal Complaints Pending at End of 1958-1959 Fiscal Year

<i>File</i>	<i>Date</i>	<i>Complainant</i>	<i>Nature of complaint</i>	<i>Disposition</i>
IC 70329	8/17/56	BRT vs. WPRR.....	Alleged movement of excess height and excess width cars in trains in violation of GO 26-D.	After public hearings, Decision 60440, in Cases 4919, 5305, 5379, issued July 20, 1960
IC 71289	5/ 5/58	ORCB vs. SP Co.....	Alleged movement of plasterboard bulkhead cars in through trains without dunnage being removed	Carrier revised its instructions for handling these cars. Periodic checks will continue to prevent recurrence.
IC 71397	8/18/58	BRT vs. SP Co.....	Alleged unsafe underfoot conditions—Coast Division	Conditions corrected.
IC 71435	9/23/58	BRT vs. UPRR.....	Alleged unsafe conditions requiring major construction in South Los Angeles area	After hearings, Decision 59207 issued by the Commission

IC 71558	1/20/59	BRT vs SP Co -----	Alleged unsafe underfoot conditions caused by weeds at San Luis Obispo	Conditions corrected
IC 71565	1/30/59	BLFE vs. SP Co.-----	Alleged improperly placed milepost markers result in engineers of high speed trains losing their station location	General field study made. Program for correction instituted.
IC 71639	4/20/59	Mrs Moyer of Stockton vs STE-----	Alleged that noises created by mechanical refrigerators disturb citizens in the adjoining area	Carrier cut cooling unit operation to minimum and stored cars away from residence
IC 71649	4/30/59	BRT vs. SP Co -----	Alleged impure drinking water on locomotives and cabooses at Lodi	Conditions corrected
IC 71655	5/ 4/59	ORCB vs UPRR-----	Alleged impaired overhead clearance exists at Mastic Tile Co, Long Beach, Calif	Railroad operations discontinued.
IC 71856	5/ 4/59	BRT vs. WPRR-----	Alleged violation of flagging rules	Complaint unjustified
IC 71866	5/14/59	City of Bakersfield vs SP Co -----	Alleged excessive blocking of Haley Street, Bakersfield Yard by switch crews	Overpass constructed nearby permitting street to be closed
IC 71672	5/19/59	ORCB vs SP Co -----	Several alleged unsafe conditions at various locations—Shasta Division.	Conditions corrected.
IC 71680	6/ 5/59	BRT vs. SP Co -----	Alleged unsafe underfoot conditions at Ampex Company.	Oil saturated material replaced with clean fill
IC 71700	6/19/59	SUNA vs. SP Co -----	Alleged excessive growth of weeds on PFE lead track, Roseville.	Weeds removed

Railroad Companies

ABL—Alameda Belt Lane Railroad
 ATSF—Atchison Topeka & Santa Fe Railway
 CCT CO—Central California Traction Co.
 CWRR—California Western Railroad Co
 NWP—Northwestern Pacific Railroad Co
 PFE—Pacific Fruit Express Co
 SDAE—San Diego & Arizona Eastern R R
 SMVRR—Santa Maria Valley Railroad Co
 SNRY—Sacramento Northern Railway
 SP CO—Southern Pacific Co
 STE—Stockton Terminal & Eastern Railroad Co.
 UPRR—Union Pacific Railroad Co
 WPRR—Western Pacific Railroad Co

Key to Abbreviations**Labor Organizations**

BLE—Brotherhood of Locomotive Engineers
 BLFE—Brotherhood of Locomotive Firemen and Enginemen
 BRT—Brotherhood of Railroad Trainmen
 ORCB—Order of Railway Conductors and Brakemen
 SUNA—Switchmans Union of North America
 BRCA—Brotherhood Railway Carmen of America

Terminal

LAUPT—Los Angeles Union Passenger Terminal

HOUSE RESOLUTION NO. 405

BY MR CUNNINGHAM

Relative to an Interim Study of the Sale of Business Franchises

Resolved by the Assembly of the State of California, That the subject matter of transactions involving the sale of business franchises and the sale or rights to use exclusive processes, patents or trade names, with particular emphasis upon fraudulent transactions in relation thereto and the needed revision of any laws pertaining thereto, is assigned to the Committee on Rules for reassignment by it to an appropriate interim committee which committee shall report thereon to the Assembly not later than the fifth calendar day of the 1961 Regular Session of the Legislature.

SCOPE OF SUBCOMMITTEE STUDY ON THE SALE OF BUSINESS FRANCHISES

This subject was reviewed at an initial hearing held on December 1, 1959, in Los Angeles. From testimony received at this hearing it was determined that some form of regulation over the sale of such franchises for promotional purposes appeared to be warranted but that extreme care would be required so as not to interfere with the orderly operation of existing business enterprises where dealer franchises are granted by established business concerns.

Also, it was determined by the subcommittee that most complaints from citizens involved dance and health studios. Since the Assembly Judiciary—Civil Interim Committee planned extensive hearings and studies on prepaid service contracts of health and dance studios this subcommittee deferred any further investigation into this matter in order to avoid duplication of studies.

PERSONS APPEARING AND TESTIFYING BEFORE THE SUBCOMMITTEE

THOMAS D. HODGE, Los Angeles Better Business Bureau

HERBERT A. SMITH, Assistant Commissioner, Division of Corporations, California Department of Investment

JOHN G. SOBIESKI, Commissioner of Corporations, Division of Corporations, California Department of Investment

MRS. FREDERICK W. SPENCER, California Federation of Women's Clubs

MRS. FRED S. TEASLEY, State Radio and Television Chairman, California Federation of Women's Clubs

RECOMMENDATIONS OF THE SUBCOMMITTEE

After reviewing the Judiciary (Civil) Committee's recommendations to the 1961 Legislature in this field the committee endorses the intent of these recommendations.

REPORT ON THE INSTALLATION AND RELOCATION OF PUBLIC UTILITY FACILITIES

HEARINGS HELD ON THE SUBJECT OF INSTALLATION AND RELOCATION OF PUBLIC UTILITY FACILITIES

Two hearings were held by this subcommittee of the Assembly Interim Committee on Public Utilities and Corporations. The first hearing was held in Los Angeles January 13 and 14, 1960; the second in Sacramento July 7, 1960.

These hearings were held to study the subject matter of Assembly bills referred to this interim committee by the Assembly Rules Committee following the 1959 Session of the Legislature. These bills are generally relative to the installation and relocation of public utility facilities. The subject matter of the bills referred to be studied by this subcommittee was contained in Assembly Bill 330, Assembly Bill 628, Assembly Bill 1968 and Assembly Bill 2811.

SCOPE OF SUBCOMMITTEE'S STUDIES

The subcommittee confined its study in the first hearing to the subject matter contained in the Assembly bills relating to relocation and installation of utility facilities referred to this interim committee by the Assembly Rules Committee. No attempt was made to pass on the merits of these bills.

Subsequent to this hearing the committee prepared a tentative draft of legislation along the lines recommended by testimony at that hearing. Copies of this tentative draft, together with notice of the second hearing, were mailed to interested parties. This subcommittee had formed no opinion as to the merits of this tentative legislation but hoped the testimony on the tentative draft received during the second hearing might enable it to make recommendations to the 1961 Session of the Legislature which would be beneficial to industry and government and of paramount importance to the people of this State.

PERSONS APPEARING AND TESTIFYING BEFORE THE SUBCOMMITTEE

KARL BALDWIN, City Manager, City of Pacifica
FRANKLIN G. CAMPBELL, Attorney, California Public Utilities Commission
RICHARD CARPENTER, League of California Cities
WALTER A. CAVAGNARO, Supervising Utilities Engineer, California Public Utilities Commission
ALLAN G. COOLEY, Assistant to the President, General Telephone Company
VINCENT T. COOPER, County Supervisors Association of California
JOHN A. DAVENPORT, Counsel, Metropolitan Water District of Southern California
ROBERT M. DESKY, Deputy City Attorney, City and County of San Francisco
KENNETH DIERCKS, Pacific Gas and Electric Company
RAY C. EBERHARD, California Municipal Utilities Association
JEAN FASSLER, Mayor, City of Pacifica
RICHARD T. HANNA, Assemblyman, Orange County
HAROLD HARTSOUGH, JR., Pacific Telephone and Telegraph Company

HARRIS O. HOGENSON, Executive Director, Redevelopment Agency of the City of Fresno
HENRY A. JACOPI, Assistant Director of Transportation, California Public Utilities Commission
HENRY E. JORDAN, Chief Engineer, City of Long Beach
WILLIAM E. JOHNS, Attorney, Pacific Gas and Electric Company
A. S. KOCH, County Surveyor and Road Commissioner, County of Orange
JEROME F. LIPP, Executive Director, Redevelopment Agency of the City of Sacramento
ROBERT S. LATCHAW, Design Engineer, Contra Costa County
WILLIAM R. MACDOUGALL, Manager, County Supervisors Association of California
WILLIAM J. McLEAN, Pacific Telephone and Telegraph Company
WARREN McCLURE, General Manager, North Coast County Water District
HENRY J. MILLS, Construction and Operation Engineer, Metropolitan Water District
WALTER J. MONESCH, Assistant Executive Director, Redevelopment Agency of the City of San Jose
MARTIN A. NICHOLAS, Vice-President, County Engineers Association
C. ARTHUR NISSON, JR., General Counsel, County Sanitation Districts of Orange County
RAYMOND S. J. PIANEZZI, Assistant Chief, Right of Way Section, Division of Highways, Department of Public Works
DUANE PORTER, Chief Executive Assistant, Community Redevelopment Agency of the City of Los Angeles
EMERSON W. RHYNER, Attorney, Department of Public Works
KENNETH A. ROSS, JR., Associated General Contractors
JEROME F. SEARS, Executive Director, Redevelopment Agency of the City of San Bernardino
DANA SMITH, Deputy District Attorney, Santa Barbara County
LELAND R. STEWARD, Road Commissioner, Santa Barbara County
THOMAS L. SWEENEY, Los Angeles City Engineer's Office
HERBERT WENZEL, Redevelopment Agency of the City of Rio Vista
FRANK B. YOAKUM, JR., Attorney, Malibu Water Company

GENERAL PROBLEM RELATING TO THE RELOCATION OF PUBLIC UTILITY FACILITIES

Over the years private and public utilities, such as water, gas, power, telephone and railroad companies have been permitted to construct and place their facilities in or adjacent to streets, alleys, roads and highways. Permission has been granted by state statute, city and/or county franchises, or permits, depending upon conditions and circumstances.

Continued population growth and changing conditions have created enormous requirements for construction of new highways, both county and state, the rerouting and widening of existing highways, improving city streets, alleys, etc. In a number of localities slum or blighted areas are being acquired and cleared by redevelopment agencies. Many new public buildings have and are being constructed requiring site clearance. In most instances where and when such projects are undertaken usually one or more public utilities are forced to move their facilities such as pole lines, underground cable, ducts, pipes, water and gas lines, sewers and hydrants to new locations.

The question of who should pay the costs where a public utility must relocate its facilities for reasons described here appears to be an area

which under some conditions and in some localities is not clearly defined. This subcommittee believed the views of interested parties at these hearings could produce ideas on recommendations for possible solutions to this problem.

POSITION OF THE DEPARTMENT OF PUBLIC WORKS ON RELOCATING PUBLIC UTILITY FACILITIES

The question of relocation of public utility facilities in connection with highway improvement is of vital concern to the Department of Public Works. Each year the department expends millions of dollars in reimbursing utilities for the relocation of their poles, pipe lines and facilities when brought about by highway and freeway construction. It is safe to say that the utilities expend very substantial amounts. Therefore, any change in the law regarding the rights of various parties to these transactions would be of extreme importance to both the state and utility organization.

Organizations have been established at the city and county levels for the purpose of coordinating the construction of street and highway work with the installation and relocating of utility facilities, and the department has endeavored to cooperate in all organizations which have been established for this purpose. The department attempts to give them all information regarding planned or active construction on state highways within their boundaries. Likewise, the department is exceedingly interested in getting information from others on their planned installations. In this way the department believes not only can expensive relocations be held to a minimum, but the inconvenience to traffic caused by installation of utilities in existing highways can be minimized.

It has been the policy of the Department of Public Works to engage in coordination throughout the State on matters involving utility facilities. Their experience has been satisfactory and they believe it has paid off both for the ratepayers and the taxpayers. If the Legislature feels either by resolution or by legislation that coordination, which is now existing, can be continued or bettered, the Department of Public Works is certain they can live with it.

ORANGE COUNTY UTILITIES COORDINATING COMMITTEE

Early in 1957 Orange County formed a Public Works and Utilities Coordinating Committee. All of the overhead and underground utility agencies operating in the county were included in this committee. The purpose of this group is to exchange construction information in the form of a published monthly agenda containing location and nature of construction together with time schedules. In this manner interested parties are informed from 6 to 12 months in advance of a project's start date.

Agencies who in the course of their operations install underground or overhead utilities are represented by the Army, Navy, Bureau of Public Roads and the State Division of Highways. In addition to these there is participation on the part of utilities under the jurisdiction of the Public Utilities Commission such as the Southern California Edison Company, Southern Counties Gas Company, Pacific Lighting

and Gas Company, San Diego Gas Company, Pacific Telephone Company, General Telephone Company and practically all major oil companies.

Orange County does not believe their Utilities Coordinating Committee through their operations has solved the problem of construction conflicts but they do believe their objectives are steps in the right direction. They recommend that all counties which have not already done so organize a Utilities Coordinating Committee for their area. Orange County does not feel legislation for the implementation of such a program statewide would be practical. Rather, they believe the program must be organized on a voluntary basis and to be successful must inspire the finest type of cooperation possible on the part of all agencies involved.

THE LOS ANGELES SUBSTRUCTURE COMMITTEE

The Los Angeles Substructure Committee was formed in 1926 and has met continuously for 33 years. The committee is composed of governmental agencies in the Los Angeles area; the State Division of Highways, the City of Los Angeles, the County Road Department, the County Sanitation Districts and the County Flood Control Districts. It also has as members all of the utility companies in this area, the proprietary departments such as water and power, the police and fire divisions of the city, Western Union and also organizations interested in this type of problem like the Automobile Club of California.

The committee not only meets monthly to exchange information on jobs that are coming up but also, through subcommittees, prepares publications of interest not only to utilities but the agencies as well.

The City of Los Angeles, which is a member of the Los Angeles Substructure Committee, is opposed to any legislation relating to co-operative committees. They believe such legislation would serve no useful purpose and might, if it contained more strict provisions, discourage the formation of new committees and adversely affect the operations of committees now in existence. If the Legislature wants to take some action that would encourage the formation of coordinating committees the City of Los Angeles believes it can best be done by the adoption of a resolution commending the accomplishments of existing committees and urging communities not now served by such committees to form them.

POSITION OF REDEVELOPMENT AGENCIES RELATING TO RELOCATING OF PUBLIC UTILITY FACILITIES

During the past few years several redevelopment agencies have established themselves in the State. To name a few—Sacramento, Stockton, Santa Rosa, San Jose, and San Bernardino are some of the cities where such organizations are active. In operation, redevelopment agencies acquire property in blighted or slum areas. The property is then cleared of existing structures. Following this everything such as realigning streets, constructing new sidewalks and curbs and rehabilitating sanitation systems is done to make the property attractive to real estate developers. It is obvious that in this type of operation many utilities become involved.

It is the understanding of the redevelopment agencies, according to testimony received, that under the existing law utilities must relocate at their own expense. This, they believe, is justified because in most of these areas utility facilities are obsolete and in need of replacement. In addition they emphasize the increased market potential their plan offers the utilities.

Redevelopment agencies believe the existing law provides ample recourse to utilities as well as all owners of property in the event the agencies' actions are deemed unreasonable. They think the existing legislation setting up their authority clearly provides a system of checks and balances to assure that the rights of utilities can be and are protected. As a result they do not believe there is a need for additional legislation.

POSITION OF THE LEAGUE OF CALIFORNIA CITIES AND THE COUNTY SUPERVISORS' ASSOCIATION OF CALIFORNIA

Both the League of California Cities and the County Supervisors' Association of California believe in general the working relationships between the cities, counties and the utility companies are satisfactory. They are in full accord that close coordination between political entities and utilities involved in construction projects is of mutual benefit. Certainly the end results will effect savings to the taxpayers as well as the ratepayers.

They strongly support the establishment of utility coordinating committees in those cities and counties which have not already done so and where it is obviously needed. In their opinion legislation is not required for this purpose. They feel the cities and counties now have the authority to utilize coordinating committees just as they have already done in many areas of the state. However, they are in favor of any measure which will encourage further use of utility coordinating committees by cities and counties throughout the State.

FINDINGS OF THE SUBCOMMITTEE

As a result of testimony received at hearings held in Los Angeles and Sacramento the subcommittee determined the following facts:

1. It has been the policy of the Department of Public Works to engage in coordination throughout the state on matters involving utility facilities. Their experience has been satisfactory. If the Legislature feels either by resolution or by legislation that coordination, which is now existing in many areas, can be continued or bettered, the Department of Public Works is certain they can live with it.

2. Over a period of years coordinating committees have been established at the city and county levels. Committees are generally composed of representatives of governmental agencies, utilities and other interested parties. Their purpose is to exchange intelligence on construction projects involving installation, removal or relocation of utility facilities. As attested by representatives of the Orange County Utilities Coordinating Committee and the Los Angeles Substructure Committee, this approach to the problem has proved successful for all participants. Proponents of this approach recommend that all cities and counties

which have not already done so organize counterparts. They do not believe legislation for such a program on a statewide basis would serve any purpose. Rather they favor organization of such committees on a voluntary basis. The City of Los Angeles believes if the Legislature wants to take some action to encourage the formation of coordinating committees it can best be done by the adoption of a resolution commending the accomplishments of existing committees and urging communities not now served by such committees to form them.

3. The League of California Cities and the County Supervisors' Association of California strongly support the establishment of utility coordinating committees in those cities and counties which have not already done so and where it is indicated that they are needed. In their opinion legislation is not required for this purpose. They feel the cities and counties now have the authority to utilize coordinating committees just as they have already done in many areas of the State. They are, however, in favor of any measure which will encourage the adoption of utility coordinating committees by cities and counties throughout the state where the need for such coordination is evident.

4. It is the consensus of the redevelopment agencies which are now established in the state that no further legislation is required. They believe the existing legislation setting up their authority clearly provides a system of checks and balances to assure that the rights of utilities can be and are protected.

5. Utilities represented at these hearings feel they are enjoying satisfactory coordination from the State, cities and counties. They do not believe further legislation is required to improve existing relations. However, if the Legislature feels legislation is desirable these utilities will cooperate to the fullest degree.

RECOMMENDATIONS OF THE SUBCOMMITTEE

Predicated on its study of this problem the subcommittee recommends that the Legislature, in its 1961 Session, adopt a resolution commending the accomplishments of existing utilities coordinating committees and urging communities not now served by such committees to form them in order that the greatest savings possible may be enjoyed by the ratepayers and taxpayers of the State of California in the installation and relocation of public utility facilities.

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ASSEMBLY INTERIM COMMITTEE REPORTS

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VOLUME 16

NUMBER 7

REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON
PUBLIC UTILITIES AND CORPORATIONS

TO THE CALIFORNIA LEGISLATURE

On House Resolution No. 358

RELATIVE TO PAY TELEVISION

MEMBERS OF THE COMMITTEE

REX M CUNNINGHAM, *Chairman*

FRANK LUCKEL, *Vice Chairman*

LEE M BACKSTRAND

CARL A BRITSCHGI

MONTIVEL A BURKE

RONALD BROOKS CAMERON

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CLAYTON A DILLS

AUGUSTUS F HAWKINS

JAMES I HOLMES

PAUL J LUNARDI

CHARLES H WILSON

January 2, 1961



Published by the

ASSEMBLY

OF THE STATE OF CALIFORNIA

HON RALPH M BROWN
Speaker

HON WILLIAM A MUNNELL
Majority Floor Leader

HON CARLOS BEE
Speaker pro Tempore

HON. JOSEPH C SHELL
Minority Floor Leader

ARTHUR A OHNIMUS
Chief Clerk

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON
PUBLIC UTILITIES AND CORPORATIONS
SACRAMENTO 14, CALIFORNIA, January 2, 1961

HONORABLE RALPH M. BROWN,
Speaker of the Assembly; and
Honorable Members of the Assembly
State Capitol

DEAR SPEAKER BROWN AND MEMBERS: Enclosed is the Assembly Interim Committee on Public Utilities and Corporations Report on House Resolution No 358, relative to pay television

The study of this subject matter was conducted by a subcommittee of this interim committee. However, the recommendations submitted in this report have been approved by all members of the interim committee.

The remainder of the subjects studied by the Assembly Interim Committee on Public Utilities and Corporations have been covered in a separate report which has been submitted to you.

Respectfully submitted,

REX M. CUNNINGHAM, *Chairman*

HOUSE RESOLUTION NO. 358

By Mr. Cunningham and Others

Relative to a Study of Subscription, Box Office and Pay Television

Resolved by the Assembly of the State of California, That the subject matter of subscription, box office and pay television is assigned to the Committee on Rules for reassignment by it to an appropriate interim committee.

The committee shall study all facts and circumstances relating to the subject of this resolution, including a study of the actual functions of this new, competitive entertainment industry, and its impact upon the economy and the culture of the State of California, as a means of determining the need or the lack of need, the advisability or the inadvisability, for legislation, and shall report its findings and its recommendations to the Legislature not later than the fifth calendar day of the 1961 Regular Session of the Legislature

PAY TELEVISION

PERSONS APPEARING AND TESTIFYING BEFORE THE SUBCOMMITTEE

WILLIAM BENNETT, Chief Counsel, California Public Utilities Commission
T M CHUBB, Chief Engineer and General Manager, Department of Public Utilities and Transportation, City of Los Angeles
MANLEY EDWARDS, Telephone and Telegraph Engineer, California Public Utilities Commission
MATTHEW FOX, President, Tolvision, Inc
CARL M HOLMES, Pacific Telephone and Telegraph Company
CHESTER I LAPPEN, Vice President International Telemeter Corp
WILLIAM J McLEAN, Pacific Telephone and Telegraph Company
HAROLD J SCHWARTZ, Angel Toll Vision
MRS FRED TEASLEY, State Radio and Television Chairman, California Federation of Women's Clubs

HEARINGS AND FIELD STUDIES

Two hearings were held by the Subcommittee on House Resolution No 358 at the following locations November 4, 1959, State Building, Los Angeles, May 18, 1960, State Building Annex, San Francisco

On November 5, 1959, the subcommittee visited the Paramount Studios in Hollywood and was shown the Telemeter pay television system

SCOPE OF SUBCOMMITTEE'S STUDY

The study of the subject matter of pay television was assigned to this interim committee by the Assembly Rules Committee when House Resolution No 358 was adopted by the 1959 Legislature

During the 1957-59 interim, a subcommittee of this interim committee held hearings relative to "Pay-to-see TV" At that time the issue as to whether or not toll television was practical and immediate could not be determined However, the tremendous impact toll television would have on the public of this state was considered so great it appeared desirable to determine the progress made by the various systems.

Accordingly, this subcommittee has directed this study to determine what changes, if any, have taken place in the status of toll television since the last interim study

PAY TELEVISION SYSTEMS

When this subject was last studied during the 1957-59 interim two basic types of systems were described to this subcommittee by certain promoters of toll television One type, the so-called "air length TV," contemplates the use of an existing and unassigned air channel The program would be transmitted through the air by means of a scrambled signal Equipment would be installed on the subscriber's television set to unscramble the signal sent out by the "pay-to-see TV" distributor Licensing and control of this type of system would be a responsibility of the Federal Communications Commission The State of California would have little or no control.

The other type is called a "closed circuit" system. The signal in a closed circuit system is transmitted to the subscriber's television set through cables similar to the method presently planned by Tolvision and Telemeter as stated in their most recent testimony before this subcommittee.

About three years ago promoters of the closed circuit type of system were actively engaged in attempting to secure franchises from cities and counties in the more populated areas of the State. As a matter of fact, the situation at one time was so acute that the League of California Cities, to encourage uniformity, prepared a suggested closed circuit television franchise ordinance which was transmitted to the cities on December 12, 1957, for use of those cities which were considering such franchises.

Following are brief descriptions of the pay television systems presented to this subcommittee:

Angel Toll Vision

Angel Toll Vision is an idea conceived by Halvick Industries, Mill Valley, California. Under their concept members of Angel Toll Vision would be notified in advance through various advertising media of the program or programs planned for presentation, together with the estimated costs. Subscription will be voluntary. If the amount of money subscribed is sufficient to cover the costs, the program will be presented as scheduled. If not, an alternate sponsor-paid program will be broadcast. Existing television broadcast facilities, network and subscriber sets would be used without any change or modification. Generally subscriptions would be made through banks, oil company and other credit cards. This idea was registered with the Federal Communications Commission April 1, 1958.

This type of system would be under the exclusive jurisdiction of the Federal Communications Commission.

Telemeter (International Telemeter Corporation)

Telemeter is a Paramount Pictures pay television system. On November 5, 1959, this subcommittee was taken on a guided tour of Telemeter's West Los Angeles Plant. Here, among other things, the subcommittee was shown an actual Telemeter studio installation, transmission and com-operated television program.

Telemeter is a three-channel closed circuit type of system. Programs are transmitted to subscribers' television sets by means of wire or cable. The three Telemeter channels differ from conventional air link channels in that they operate on special frequencies and can only be received on television sets where special Telemeter equipment has been installed. Signals transmitted on the Telemeter wired system of pay television leave the studio on a single cable. This cable distributes the signals to principal neighborhoods of a community wired for this purpose. Feeder lines attached to utility company poles fan out through residential areas. Individual homes are linked to the system via drop-offs along the way.

This is the way the system works: A subscriber wishing to view a program turns on his set and simultaneously tunes the Telemeter attachment. A "barker" comes on and announces the programs being offered, together with their prices. A price indicator on the Telemeter

unit indicates charges made for each program as it is selected. Upon payment of the coin demand the program appears. A tape recorder automatically identifies all programs purchased. This recording tape, together with the deposits are collected at 30- to 60-day intervals. This system of wire pay television is able to offer three programs simultaneously over a single channel. Studio equipment is geared for transmission of three attractions simultaneously.

During the November 4, 1959, hearing this subcommittee was informed Telemeter was in the process of installing their pay television system for Famous Canadian Players in the Town of Etobicoke, located in West Toronto, Canada. They expected to be in operation about the middle of December. Initially, they expected to serve about 5,000 subscribers. During the May 18, 1960, hearing this subcommittee was informed by a representative of Telemeter that approximately 3,200 homes had subscribed to their system and they were attaching them every day with a back order of about 1,500 applications for their system. The subcommittee was also informed that they planned to expand the main cable in the Etobicoke area so that they could have 40,000 homes available to their main cable instead of the 13,000 they had originally planned.

Also in the Telemeter Etobicoke installation the cable and wire distribution system was constructed by the telephone company with the costs borne by the Famous Canadian Players. The telephone company will also apply a monthly charge for maintenance, use of facilities, etc. There is a \$5 installation charge but no minimum monthly guarantee.

Telemeter and Paramount do not intend to operate their system on a direct basis. Rather they plan to rent their equipment to various exhibitors throughout the country under a franchise agreement. To further promote the widest possible use of pay television systems, Telemeter is organizing a corporation which will engage in the acquisition and booking of events of substantial public interest.

It was readily apparent to the subcommittee that at least Paramount was intending to participate in toll television to a great degree and were anticipating earnings superior to those realized during the best days of motion pictures.

Tolvision, Inc. (Formerly Skiatron, Inc.)

The Tolvision operation is a closed circuit type of pay television which is governed by a central billing unit at a headquarters location which can determine the program their subscribers are watching. This differs from their previous concept of using an IBM printed circuit card for both program selection and billing purposes.

Their present concept is a system composed of three separate television channels and two audio only channels. The latter will make it possible to provide a music service in addition to three video programs. In operation, the subscriber would turn his set to an unused channel, such as either 5 or 6, then select the program he wishes from the unit provided by Tolvision. Central headquarters would be provided with a piece of equipment called an interrogator. This interrogator sends out signals at four- or five-minute intervals which sweep the entire system. It has a capacity to record what 400 thousand subscribers are watching at any given time. This information is transcribed from the

interrogator into standard IBM business machines. The machines then will produce an invoice giving the subscriber the detail of the program viewed and charges. Statements will be sent to subscribers at the end of each month.

Tolvision, Inc., does not intend to make an installation charge for their service. Charges will be based on the programs watched and possibly a service fee for music.

Although this system has not been demonstrated publicly, beginning in October, 1958, they established a plant in Lynbrook, Long Island, for test purposes. During the testing period observers from the Bell Laboratories, the New York Telephone Company and American Telephone and Telegraph Company engineers provided some assistance. According to the witness appearing before this subcommittee, these tests proved the equipment Tolvision proposes to use is technically sound. They are prepared to go forward as soon as such elements as financing, franchise arrangements, wire distribution system, etc. are worked out.

PROGRAMMING, CHARGES AND ADVERTISING

Promoters of pay television contend their media is the only practical economic method to offer the public programs which they want and should see. Presentations generally would consist of attractions where admission fees are charged at the scene of the event, whether it be a baseball park, football stadium, fight arena, motion picture theater, legitimate theater, an opera house or concert hall. Unless there is a cost comparison to the subscriber of pay television, presentations would lose a certain amount of appeal, which in turn would definitely affect the demand. Proponents further contend because of cost, many of the more important sporting events will be removed from free or commercial television and this media will provide a means for the home viewer to see them. Also, they believe, under the toll television concept, it will be possible to show programs such as opera, ballet and Broadway plays, which, because of cost, are not shown on free television.

Costs to subscribers of toll television are somewhat nebulous. Witnesses appearing before this subcommittee have talked in terms of perhaps a one-dollar charge for receiving a first-run movie. Telemeter, at their Etobicoke, West Toronto installation, are presently applying this charge. They also present a children's program on Saturday afternoon for 25¢. Charges for individual presentations, however, will undoubtedly vary depending on costs of production. As stated in our previous report, flat rate system charges approximate \$8 to \$10 per month.

Promoters of pay television are in accord on prohibiting "commercials" or paid advertising from their presentations. Thus they contend is one of the strongest selling points in assuring their viewers an uninterrupted program.

POSITION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY RELATIVE TO PAY TELEVISION

At the subcommittee hearing in Los Angeles on November 4, 1959, the Pacific Telephone and Telegraph Company's representative made

the following statement as to the company's position relative to pay television.

"The Pacific Telephone Company recognizes it has a responsibility to meet the public demands for public utility communication services. Over the years there have developed demands for various kinds of communication services. Special facilities, channels for various types of TV programs, have been furnished under filed tariff charges for a number of years. Pacific Telephone Company has provided channels between one premise and another for closed circuit TV which is used for educational purposes, the transmission of prize fights for theater showings, and to meet various needs of industry. The company has provided only the channels necessary to transmit the programs and has had nothing to do with the cameras or the programs.

"Closed circuit TV requirements have been quite limited and have been met by using existing facilities or by modest additions to telephone plant.

"Some time ago, Pacific Telephone Company was asked to consider whether it would provide channel facilities for closed wire circuit pay TV. The plans contemplated providing closed circuit TV programs to residences throughout large metropolitan areas. These plans have posed many and diverse problems.

"In recent months, there has been considerable interest in pay TV by Congress and the State Legislature. It is not clear at this time what course this interest will take.

"It is not the province of Pacific Telephone Company to decide what the public policy should be. Whether pay TV is good or bad, the type of program, how much is charged, and many other problems are not the responsibility of the Telephone Company. It would not provide the studio or receiving equipment and it would not assume any responsibility to the subscriber to pay TV in regard to these matters. Its only interest is in supplying channels in the event closed wire circuits are required by financially responsible persons selling pay TV service to the public.

"The provision of channels needed for closed wire circuit TV to serve large metropolitan areas could involve construction of facilities costing many millions of dollars. The Telephone Company cannot invest these large amounts to serve a risk venture which anticipates a public demand which has not been proven, without adequate financial guarantees. To do so would put an inequitable burden on other public utility services.

"It may be impractical in many communities for the pay TV company to construct the substantial amount of distribution plant of wire, poles and underground conduits which would be necessary. In the event it is determined that pay TV is in accord with public policy, there is a demand for it, the financial and other requirements are met; Pacific Telephone Company can furnish the required facilities.

"In the event Pacific Telephone Company provides channel facilities for pay TV in California, it will be necessary for it to

obtain approval of rates and conditions for the furnishing of such service from the California Public Utilities Commission. At the present time such approval has not been requested by our Company "

POSSIBLE STATE REGULATION UNDER EXISTING LAW

Under the existing laws the State of California has no authority to regulate closed circuit television systems. As pointed out in an earlier section "Air-Length" television systems are definitely under the regulation of the Federal Communications Commission. Under existing laws the California Public Utilities Commission would have no control over rates or charges made by toll television operators. However, if the promoters of toll television contract with a utility company to provide their cable distribution system, such contracts would have to be approved by the California Public Utilities Commission. Commission approval would be forthcoming only if it were clearly established the additions to the utilities' physical plant were self-supporting and would not conflict with the present and future service rendered by the utility.

FINDINGS OF THE COMMITTEE

As a result of the hearings in Los Angeles on November 4, 1959, and in San Francisco on May 18, 1960, the subcommittee determined the following facts

1. There is a continuing movement to promote the franchise and installation of pay television systems in this State. Some cities and counties have and are negotiating franchises for that purpose and contracts have been made for programming.

2. Economically and practically the provision of distribution systems for closed circuit television systems depends on the participation of telephone companies. Under present state law the Public Utilities Commission has jurisdiction to protect existing and future telephone service.

3. It appears highly improbable more than one closed circuit system can economically be installed in an area. The cost of an additional system would be prohibitive to the customer, which in turn would make him a captive to the first system for which he subscribed.

RECOMMENDATIONS OF THE COMMITTEE

There are no pay television concerns presently operating in the State of California. This committee believes that until experience is gained from actual operations it is impossible to determine the extent of and requirement for legislation. Any attempt to draft legislation at this time is, in the opinion of this committee, premature. Accordingly, it is the recommendation of this committee to take no action until such time as experience is forthcoming from actual operations.

The committee does feel, however, that the Legislature should continue to watch carefully for future developments in this field of toll television.

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REPORT OF
THE ASSEMBLY INTERIM COMMITTEE
ON AGRICULTURE

House Resolution No. 326.1, 1959

VERTICAL INTEGRATION, FAMILY FARM,
AGRICULTURAL CHEMICALS,
GREENBELTING, OTHER

MEMBERS OF THE COMMITTEE

SAMUEL R GEDDES, *Chairman*

JOHN C WILLIAMSON, *Vice Chairman*

L M BACKSTRAND
WILLIAM BIDDICK, JR
RICHARD H McCOLLISTER
CHARLES B. GARRIGUS
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HAROLD T SEDGWICK
GORDON H WINTON, JR

Compiled by
MAXINE OELLIEN, *Secretary*

January, 1961

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

HON RALPH M. BROWN
Speaker
HON WILLIAM A. MUNNELL
Majority Floor Leader

HON CARLOS BEE
Speaker pro Tempore
HON JOSEPH C SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk

LETTER OF TRANSMITTAL

December 1, 1960

HONORABLE RALPH M. BROWN

Speaker of the Assembly

State Capitol, Sacramento, California

MR. SPEAKER AND MEMBERS OF THE ASSEMBLY Pursuant to House Resolution No. 326 of the 1959 General Session, directing the Assembly Interim Committee on Agriculture to ascertain, study and analyze problems relating to vertical integration in agriculture, small family farms, marketing problems, greenbelting, the establishment of a pest control board, the use of sodium fluoroacetate (Compound 1080), and problems brought to the attention of the committee at the time of the respective hearings.

The agriculture committee held meetings in Red Bluff, Davis, Stockton, Petaluma, Fresno, Bakersfield, Riverside, Santa Barbara, Salinas, San Jose and San Diego.

This is the first time in many years that the Assembly Agriculture Committee went into the field and heard the farmers' viewpoints. We are submitting to you, herewith, these views.

Legislative action has not been recommended for many of the subjects studied either because legislative action has not been deemed appropriate or further research and study appeared necessary.

Transcripts of the hearings and exhibits offered at the hearings are available in the office of the chairman of the committee, Samuel R. Geddes, Room 2140, State Capitol, Sacramento, California.

Respectfully submitted,

SAMUEL R. GEDDES, *Chairman*

L. M. BACKSTRAND

WILLIAM BIDDICK, JR.

MYRON H. FREW

CHARLES B. GARRIGUS

JAMES L. HOLMIS

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Chairman*

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HAROLD SLEDGWICK

GORDON WINTON

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INTRODUCTION

Extract from Opening Remarks of
CHAIRMAN SAMUEL R. GEDDES
Assembly Agriculture Committee at One of the Eleven Meetings

"Our sole purpose in holding these meetings is to find out what California farmers, themselves, believe should be part of what I might call 'A Survival Program for California Agriculture.'

"California farmers are the most efficient, the most modern, the best capitalized in the world. Yet, we find, each year, their net income going down. In some commodities, they have become little more than hired men on their own farms. In almost all commodities, rising costs are not met by increased income.

"Something is wrong. When we find out what's going wrong and what those closest to farm problems believe ought to be done about it, we intend to bring 'A Survival Program for California Agriculture' to the next Legislature and to the Governor.

"Our method of achieving that purpose is to have the farmers tell us what they think ought to be done about our many pressing farm problems and to find out from them what they themselves have done to keep afloat in the stormy weather that agriculture has been having in the past few years.

"Laws are made to protect the people and when they no longer fulfill this purpose, it is the people's job to change them through their representatives in Sacramento and Washington. We are coming to you, to hear your problems, and to hear your recommendations for solving them."

COMMITTEE HEARINGS

The committee held hearings in Fresno, September 29, 1959, Bakersfield, September 30, 1959, San Jose, October 15, 1959, Salinas, October 16, 1959, Santa Barbara, October 26, 1959, Stockton, November 20, 1959, Petaluma, November 23, 1959, Riverside, November 27, 1959, San Diego, December 2, 1959, Davis, May 2, 1960; and Red Bluff, August 26, 1960. At these 11 meetings held throughout the State, some 660 persons attended, with testimony received from approximately 340 farmers, farm officials, experts and interested citizens.

COMMITTEE WORK PLAN

The committee's work plan was designed to make a thorough and detailed inquiry into the Agricultural Program in the State of California.

Many facets of agriculture were reviewed and studied. The egg, turkey, poultry, livestock, milk industries, the vegetable growers, the citrus, fruit and nut growers, taxes, urbanization, water, power and all other factors relating to producing food from the fields to the consumer.

The committee was authorized and directed to ascertain, study and analyze the following legislative measures, along with other matters relating to agriculture

1. Vertical integration and contract farming in agriculture—A.C.R. 60 (McCollister, Samuel R Geddes, Winton, and Belotti).

2 The problems of the family-size farm—H R 365 (Williamson, Garrigus, and Samuel R Geddes)

3 The problems of small business with special reference to a bill setting up a division of small business and in the State Board of Equalization—A B 1470 (Samuel R Geddes, Pattee, Chapel)

4 A bill setting up an agricultural pest control board to govern the agricultural pest control industry—A B 2513 (Frew, by request).

5 The use of the chemical, sodium fluoroacetate (Compound 1080) in agricultural and range rodent and predator control—A B. 1996 (Beaver)

6 Emergency Food Production Soil Reserves—A B 2834 (Rees, Bruce F Allen, Bradley, Hegland, Nisbet, Schrade, and Winton).

We, in turn, are submitting to you the testimony received at the meetings with the hope that California's three billion dollar a year agriculture industry will be better understood

There is no record of an Assembly Agriculture Committee which has had the interest, or taken the time, or exerted the effort to actually meet the farmers and hear their problems and viewpoints

Because of similar viewpoints, testimony from all persons testifying before the committee have not been included in this final report, due to repetition

APPRECIATION

The committee extends their thanks and appreciation to all persons who have assisted in bringing this report to the California Legislature.

The thoughtful and generous response the committee received was most gratifying and helpful, not only at the hearings, but later as well, with written statements being submitted. Both the testimony and written statements were valuable aids to the committee's work and has contributed greatly to the observations contained herein.

Special thanks to the representatives and members of the California State Grange, California Farm Bureau Federation, Giannini Foundation Economists, University of California Extension Service, University of California staff (Davis-Berkeley), California Department of Agriculture officials, farm associations, co-operatives, individual farmers, and local newspapers for their attendance at meetings and also relaying the subject matter to their readers

OBSERVATIONS

Samuel R. Geddes, Chairman of the Assembly Agriculture Committee, submitted the following observations to the national conventions, taken from the viewpoints and recommendations of persons testifying at the committee hearings held throughout the State of California:

"We heard farmers by the hundreds. They all said that things were terrible. Then we heard from farm experts, from the university and elsewhere. They said that things were not only terrible, they were going to stay terrible, even get worse. Looking at the evidence, I agreed with them. Studying the national situation, I find it no different, so my suggestions will not be 'local' or 'regional'."

My interpretation of the findings of the committee is as follows:

1. The basic farm problem, here as elsewhere, is that even slight overproduction breaks the market for farm products.

2. So farmers must be allowed and encouraged to adjust production to the needs of the market in the same way that industry does. They should produce enough to give every man, woman and child in America a high-quality diet, but should not be penalized for doing so, as they are now.

3. To help farmers do this, authority for nationwide self-help marketing programs, along the lines of those we use in California, must be given at once if an independent agriculture is to continue to exist.

4. In these programs, as well as in all others, crops like those in California—fruits, nuts, vegetables, poultry, eggs—must be given the same recognition as the so-called "basics." More local fresh purchases must be made for the school lunch and food stamp programs.

5. Marketing programs will eventually have to have production licensing features. As long as anybody with money to spare can move right into agriculture, we will be plagued with unnecessary overproduction.

6. Legislation is needed to curb the effects of vertical integration by processors and suppliers, and to encourage it, where desirable, by farmers' organizations.

7. Legislation is needed to protect the right of farmers to bargain collectively. We found widespread discrimination by processors against members of farmer bargaining organizations.

8. Legislation is needed to prevent unfair trade such as labeling the products of one state as the products of another.

9. Legislation in the field of farm labor is needed to prevent unfair competition between low-wage and high-wage areas of the nation.

10 A reorganization of the Department of Agriculture is needed to stress active help to farmers on marketing problems and less research on production efficiency. I am glad to say that our California State Department of Agriculture is moving in the direction of becoming a positive aid to farmers in this way.

11 Legislation is needed to prevent the loss of our best farmland to sprawling cities and the spreading net of freeways.

VERTICAL INTEGRATION

I. DEFINITION

"The place of vertical integration in American agriculture may be best understood if one thinks of agriculture's problems in three phases. Let's call them Phases of Development of American Agriculture

During Phase I, we have been engaged in a struggle to attain efficiency of production in agriculture within the firm. This includes efficiency on the farm or ranch, the packing shed, within the processing plant and in the feed mill or other supply firms. Most of this work has been technological and scientists working for USDA, for land grant colleges and for many private companies have made tremendous improvement in plant or animal breeding, in plant or animal feeding and in engineering with water, soils, buildings and equipment. We have devoted most of our attention to this technological phase for the past 40 years

During the past 10 years, agricultural financiers, practical businessmen and co-operatives have begun to effect a reorganization of agriculture vertical integration which creates economic or organizational efficiency within industries. This is done by tying together the elements of an industry, the supplier, the farmer and the processor. Using the poultry industry for example we have the feed manufacturer, the hatchery, the producer and the processor tied together, through the mechanism of contracts between independent firms (the most common form of integration) by one company owning all stages or by means of a co-operative

Vertical integration may be most accurately defined as a production and marketing system wherein all of the essential agents in the production and marketing process are placed under unified direction and control (either by individual ownership or contractual arrangements between independent firms) to make possible the co-ordination and scheduling together of all operations. For the poultry industry this scheduling eliminates the cost that arises from volume fluctuations in a poultry processing or feed manufacturing plant. The unified control or tying together eliminates all cost of buying and cost of selling except where ingredients are bought from or dressed poultry is sold to a person who may not be brought under this unified control because his main business is not poultry. This second problem area I will call Phase II.

The third problem area of agriculture (Phase III) has to do with the relationship between the producer and the consumer, the seller and the buyer or as we say it here in this department, the correlation of supply with demand. Producers and handlers in California have for many years been using the self-help marketing order program to solve particular commodity problems in this area.

With this behind us we can now illustrate the relationship between vertical integration and marketing orders. Again, let's use the poultry

industry as our example. Prior to the integration of the poultry industry there was a tendency toward overproduction during six months out of each year, and chicken meat moved into storage during these six months and out of storage during the other six months of the year. Now since the poultry industry has been integrated, we have a tendency toward overproduction and the resulting below-cost prices all during the year.

Therefore, in the poultry industry vertical integration has increased the need for the marketing order type of program. This results from the efforts of the large integrated firms to increase their share of the market.

... The overproduction of poultry resulting from vertical integration has produced such low prices that the independent producer cannot compete even if he is willing to assume all of the risk of production. The independent producer who does not wish to be integrated by someone else may have to join a co-operative to secure the cost savings possible under vertical integration. Probably one of the most serious problems of the present situation for the independent producer is the capital problem. It is highly unlikely that any independent producer can secure an adequate supply of operating capital at as low a rate of interest as can the large integrated firm with whom he must compete. With margins pushed so thin by low prices the cost of capital can be the difference between profit and loss. Whether all our co-operatives can secure capital at a low enough cost may depend upon PCA or government-sponsored sources of credit. ¹

II. HOW HAS VERTICAL INTEGRATION COME ABOUT?

Vertical integration in agriculture is nothing new, of course. Information submitted to the committee by Dr. G. Alvin Carpenter, Extension Economist for the University of California, suggested some historical background and gave an outline of the reasons for its growth:

The general farmer of a generation ago practiced vertical integration. In his poultry business he produced the feed, grew the chicks, dressed the birds, and in many cases marketed directly to the crossroads store or the village housewife. The farmer has been contracting for years in the growing of sugar beets with the sugar company. He has been contracting his milk to the milk plant, his canning fruits and vegetables to his canner; and he has contracted his hatching eggs to hatcheries and his certified seed to certain specific buyers. The farmers' co-operative has often been his partner in this process of integration as it has developed sources of fuel, fertilizer and other production items or has taken his product through the marketing channels closer to the consumer. His co-operative has often provided know-how through production and marketing information and has helped to market or to contract for sale of his products.

It is true that many of the earlier arrangements did not involve the amount of financing, the tight control over production and marketing methods and the degree of specialization in buying con-

¹ Statement of Dr. James T. Ralph, State Board of Agriculture on Vertical Integration, October 19, 1959.

tracts that we have today, but nevertheless, we have had vertical integration in agriculture for a long time and more of it than many people think. There was a difference, however. People didn't know it by the fancy name we give it today, and nobody got unduly excited, and no one was trying to panic the nation with scare headlines that the family farm was doomed, and that farmers were soon to become peons and robots because of this development. As we look at the process today, it is not vertical integration itself which is new. It is the extent of this integration and the devices through which it is achieved that are new.

The emphasis on vertical integration today has grown out of the struggle of the agencies engaged in production and marketing of food to shorten the gap between the producer and consumer, to bypass needless agencies, dealers, brokers, and the like, to reduce costs, to get the benefits of margins in the various steps between the farm and the consumer, to obtain the benefits of mass production and large scale processing and distribution, and to supply the ultimate consumer with the kind and quality of product he desires. We simply have to recognize that these are some of the fundamental reasons why integration is developing more today.

Before the Fresno hearings, a member of the State Board of Agriculture and the manager of the Turkey Advisory Board showed how turkey profits have declined precipitously over the past decade, from a profit of close to \$5 a bird in 1948, to a net loss per bird in recent times. The plight of the industry was traced to feed dealers and others moving into it behind eager new operators in the piping times of the late '40's. They financed growers right and left, with the final result being an overproduction which reduced grower profits to zero while it still enabled the feedmen to make money since, under their gross-profit-splitting contracts, they did not have to account for depreciation on the grower's plant or pay interest on his investment. While gigantic promotional efforts had more than doubled California consumption per capita, the growers were still not making money, apparently because the integrator had no real incentive to make the moves necessary to raise wholesale prices to the level which would have brought his "hired hands" the profit from sales he had already taken on the feed he supplied to them.

Dr. Hermon I. Miller of the United States Department of Agriculture told the House Agriculture Committee in April, 1959:

The price problem being faced by the poultry industry today has been developing for a number of years. Perhaps the most important single factor directly associated with this problem has been the rapid development of the specialized commercial production within the industry and the trend to contract farming and integration.

The industry, in all its segments, has emphasized production without having a weather eye out for markets. In effect, there has been a great tendency to produce to market, rather than to produce for the market.

III. WHERE DOES VERTICAL INTEGRATION NOW EXIST IN CALIFORNIA? HOW HAS IT MANIFESTED ITSELF? WHERE IT IS LIKELY TO COME?

1. *The Turkey Industry*

According to all informants, the turkey industry is now, to all intents and purposes, completely integrated, mostly under feed dealers. The point has been reached where the flourishing turkey processing co-operative in the Central Valley is hard put to it to get birds to work on in order to maintain its flow of products to retailers. Operators with flocks who would once have been considered among the largest of independent growers, are now operating under integration contracts.

2. *The Poultry Industry*

At Petaluma, a Windsor poultry man, defined vertical integration in his industry as:

Where a poultry producer signs a contract with a feed company (ordinarily) and receives some money and one of the conditions of that contract is that he has to buy his feed from him or sell his eggs to a certain place. That is one of the conditions for getting the money.¹

A representative of the Poultry Producers of Central California at the hearings, noted that equipment manufacturers are starting to come into the integration picture and have a rather strong hand in integration at the present time, and are currently encouraging expansion in the face of the surplus which is not a very good procedure.

A county farm bureau representative at the Riverside meeting said:

The egg producers of Riverside County are in serious trouble and it is not entirely of their own making. The thing that has gotten us into trouble, in my opinion, is poor and loose financing by the following:

- 1 Business hungry feed mills
- 2 Sales anxious equipment producers
- 3 Hatcheries ambitious to sell the extra million chicks
- 4 Legitimate credit agencies in the agricultural field trying to meet falsely set lending quotas
- 5 Nonrural investors looking for income tax saving devices.²

The President of the San Geronimo Pass Farm Bureau Center echoed this:

A long period of depressed egg prices has brought poultrymen through the nation, as well as California, to a most critical financial position. The details you no doubt have heard and will hear again, repeated over and over.

Overproduction is the obvious cause. The reasons for this overproduction are less obvious. I would like to enumerate some of them:

First. Exhortations by "experts" employed by all of the institutions that employ full-time farm "experts"—such as the U S Department of Agriculture and the University of California—that

¹ Henry Burke, Petaluma Hearing, November 23, 1959.

² Robert Hartwell, Riverside Hearing, November 27, 1959.

poultrymen must continually get bigger and bigger. And poultrymen followed this advice. Profit margins kept shrinking and it took more and more eggs from more and more chickens to supply the operator and his family with a living wage.

The "experts" who encouraged this trend implied that it would end when the family farm had reached the point where no more laying hens could be accommodated without employment of outside help.

The average age of a commercial poultryman is around 50, I am told. At this age, a man should begin to slow down, not speed up. But many today are working 10-hour work days—and chicken ranching is a 365-day-a-year job—because their wives hate chickens and the kids are too busy with social life, if there are any kids. Yet, they still are having trouble meeting expenses and their ranches today are having trouble meeting expenses and their ranches today are worth only about half—on the market—of what they were worth five years ago before the "experts" started telling them that the way to put out a fire was to pour gasoline on it.

The "experts" are still at it. I quote from USDA Marketing Research Report No. 332 called "Integrating Egg Production and Marketing."

The report states:

An annual management return of only 10-cents per hen equals \$25,000 on a 250,000 hen operation. The same return per bird on a 5,000 bird flock gives the producer a management return of only \$500.

That is good arithmetic but poor economics. A 5,000 bird flock is a family-sized operation and need have no hired labor. The amount allowed in efficiency studies for labor costs—around \$1 or \$1.25 an hour—should be enough to support the operator and his family. The \$500 is clear profit.

The larger operation, however, actually must pay hired help which may prove more expensive—if not in actual wages, then in reduced efficiency. A 250,000 hen flock requires at least a \$2,000,000 investment.

Who in his right mind would invest \$2,000,000 in a business that would only pay him \$25,000 a year back? And no one who knows the chicken business would bank very heavily on even that much money. Chicken ranching is about as speculative an enterprise as there is in the world and the number of things that can go wrong—and cost thousands of dollars—is literally fantastic.

Let's face facts: the people financing these huge egg factories have no intention of getting by on a 10-cent a bird profit. They expect to squeeze the little family operator out and have the field to themselves.

Second, financing has been too easy to get. Particularly from the feed mills. They have gone so far as to send men out in the field to offer to finance ranchers in their expansion plans. In 1954, two months after I bought my ranch and despite the fact that I had absolutely no prior farming experience, a feed mill offered to loan me \$1,500 to expand. Not all of the ranchers in my area turned down offers of this type. In fact, I strongly suspect that

well over the half of the ranchers in my area have expanded with feed company financing

This means they are captive customers. They have to take the feed brought to them—and it can be watered and loaded down with “filler”—and pay whatever the mill chooses to charge them. I understand that some ranchers in this predicament are paying 50 to 75-cents a sack more for their feed than I am. They're losing money. Yet they can't quit business. What do they face? Bankruptcy, foreclosures, loss of their life's savings? Ask the feed mills.

Third. Contract egg production developed and promoted by combines usually dominated by a major feed mill. The combine owns the chickens and supplies the feed. The rancher is paid a stipulated amount for each dozen of eggs produced to compensate him for his labor, use of his ranch and other expenses. In the southeast and south central states, where this type of operation has spread like a plague, the farmer's actual return usually is less than the national minimum wage, if you figure his actual pay for the actual hours worked and deduct other expenses he must pay to run his ranch.

Contract egg production of this type is making inroads in California and doubtless is a major factor in the current egg glut. A hatchery in this area bred tens of thousands of chicks last Spring. They couldn't sell them so they grew them out, possibly to sell as “started” pullets. Still no buyers. So now a major feed company is supplying the feed and paying at least one rancher I know seven cents a dozen on the eggs produced for taking care of about 8,000 of them. There are thousands more supplying eggs to drive down egg returns of the independent poultryman.

Sure, the combine is losing money right now. But for every dollar they lose, the independent poultrymen are losing thousands. And the combine—or at least, the feed mill involved—has the resources to ride it out and many family poultrymen do not, especially after the mad rush to expand of the past several years forced many of them to use all the credit they could get.

Now that the industry is in such a mess, why hasn't it done something about it?

For one thing, the “experts”—aided by the Farm Bureau, various trade publications and it would seem even the University of California—have poured out propaganda designed to keep the poultryman confused, divided and impotent. In addition, no effective commodity organization—such as the California Turkey Federation, as an example—exists in California through which the egg producer can make himself heard.

The egg surplus is national and the state government can't do much about that. But the State, possibly through the Department of Agriculture, can do the poultryman a great service by lending its facilities to a polling of sentiment of the State's poultrymen to show legislators in Washington—such as Congressmen Clem Miller and D. S. Saund and Senators Hubert Humphrey and Clair Miller—that we back the National Poultry Stabilization Act by a whopping majority.¹

¹ Bill Barger—Riverside Hearing, November 27, 1959

It was not known how far integration had gone in California, but it mentioned that such discussion was beside the point, because it was integration in other states which had destroyed the California broiler industry.

The same trouble in eggs was foreseen with a move now underway in the deep South to integrate them. The Georgia Extension Service official, E. A. Gayvert was quoted (*The Egg Producer*, November, 1959) as saying:

The new egg contracting program is being undertaken in the main by feed dealers, feed manufacturers, and hatcheries and not by egg marketing or buying firms. This indicates that the basic motivation . . . is the procurement of feed business or the placement of chicks or pullets rather than a means of securing a continuous, uniform and quality egg supply for market demands.¹

A poultryman and egg-producer from Riverside County also believed that the egg man was headed down the same road to integration along which the poultryman had been hustled, and this as the result of a deliberate conspiracy to keep egg prices low. He believed that the wholesalers, in the case of egg-purchasing, like the processors in the case of chicken meat, simply stated the price they wanted to pay, and this was accepted as gospel by the Federal-State Market News Service without any real independent investigation. The idea was simply to force the poultryman out of business or into an integrated setup.

He felt that one of the devices of the processors and wholesalers use is to pull completely out of the market when it rises above a certain point, which caused it to drop down again.

As evidence of the poultry conspiracy he cited local 6-cent prices in about the second largest market in the United States, as against a national average of 9.6 cents.

The charge against the Los Angeles egg market was repeated by one who noted the peculiar behavior of the Los Angeles egg market which has remained down while those in some other parts of the country have gone up during some type of shortage.

He said that he felt that was collusion in the market, citing that in the past two weeks (late November, 1959), poultrymen in the area had been notified at much the same time, and apparently by all dealers, that they were going to start paying the same amount less for eggs.

It was also heard at the San Diego meeting. Whatever the reasons may be, there is apparently price leadership, at least, in this market, as a recent study by S. K. Seaver of the Giannini Foundation indicated that the timing of price changes occurred in such a way that mere chance was ruled out.

The new "caretaking" system for production of eggs was outlined by a Vista poultryman at the San Diego meeting.

For example, I read an article in one of our leading poultry publications recently reporting on this particular question. This article mentioned that the egg producer in one instance was receiving a guarantee of 5 cents per dozen for his eggs. The producer supplies the land, the laying houses, the growing cages, the

¹ Mrs. Thelma Thomas, Riverside Hearing, November 27, 1959.

brooders, egg cleaner and grader, and all other necessary equipment, plus all the labor. The feed mill provides the baby chicks, feed, vaccines, and medication. Nothing was mentioned about the cull hens and who received the pittance which they return. Also there was no mention made about who pays the personal property tax on the poultry or the utilities.

The author of this article seemed to think that this was a pretty good deal for the egg producer. Let's take a quick look at it. Suppose the producer has 5,000 hens. Ordinary egg production should be 60 percent. Good production is 65 percent. Assuming the egg producer is a good manager, then we would be gathering 3,250 eggs a day or about 280 dozen. At 5 cents per dozen this represents \$14 a day. Now \$14 per day sounds good, but please keep in mind that this man must have a lot of help from his wife. He also has land worth two or three thousand dollars, and equipment worth, under present estimates, \$5 per hen, or \$25,000.

So, out of his \$14 a day, or \$5,110 a year, he must deduct about \$1,500 for interest, at 6 percent, on his investment, plus \$2,500 for depreciation, a total of \$4,000. This leaves him \$1,110 for his labor, even if the integrator pays the taxes. Keep in mind that this man has been working about 12 hours a day, every day of the year, and his wife has been helping him at 6 hours every day.

Again, let me say the author of this article seemed to think this was a good deal for the poultryman. This is why we think some facts and figures should be acquired to show the egg producers what they are heading for if they allow this system of slavery to be imposed upon them.¹

A mail survey by the committee covered a sample of 250 out of 2,000 poultrymen who had voted in the 1957 poultry referendum and sought to find whether the amount of vertical integration had increased among them since that time.

3 *Dairying*

Informants in the dairy industry say that vertical integration has often been tried in the past, but it has never worked all the way back to the ranch, largely because of the great personal attention needed in the management of a herd.

However, the worsening position of Grade B dairymen and the competition for Grade A quotas is apparently starting a trend toward integration again.

At Fresno, a representative of the California Milk Producers' Federation, pointed out that several large processors are now giving full Grade A allotments to their own herds while cutting down on the allotments of the dairymen who sell to them.

At the Petaluma meeting, the assistant manager of the California Milk Producers' Federation, which is an organization of 17 Grade A associations with 1,600 producers in 44 northern counties, said that vertical integration is beginning to become a problem in dairying as distributors purchase ranches or interests therein. In buying milk from their own ranches they

¹ S. C. Geasly, San Diego Hearing, December 2, 1959.

allocate a disproportionate share of Class I (fluid milk) usage to these — it is possible for a distributor who ships to himself to pay himself 100 percent Class I for all his production, thereby leaving his independent shippers to carry whatever surplus or standby supply the plant has ¹

Back of this plan is also a scheme to assure themselves of more manufacturing milk supplies at a price which, until recently, was in all ways unregulated, he said. This excess Class I, sold at dump prices, naturally affected the market for manufacturing milk, thus hurting Grade B producers as well. He suggested that

it would be proper to make it illegal for a distributor to allocate to his own production more than the uniform share of his Class I usage which he allocates to all his producers further something may be needed to strengthen the bureau's power to establish prices for all classes of milk ²

He concluded in saying that to his knowledge there were as yet no retailers or wholesalers who have gone back as far as the dairy herd in integrated operations, but that one distributor had wholly-owned subsidiaries in the wholesale and retail grocery trade

A manager of the San Diego Dairymen's League, local unit of the Challenge Cream and Butter Association, said

The extent of vertical integration in the business of distributing milk which has developed in the State of California since the year 1950, is evidenced by the fact that in excess of 50 percent of all the milk now sold to retail stores in Los Angeles County is handled by food markets who are sole owners of their own milk plants, or share owners along with other market operators and corporations which are milk distributors or are owned or controlled by milk distributors

We believe that only through legislation (of this nature) can the encouragement of further vertical integration be avoided, and that unless this is done the natural consequence shall ultimately be the repeal of the Milk Control Act with the consequential loss of all of the benefits therein provided for milk producers generally ²

4. Livestock

There is a continuing and very strong trend toward integration in the livestock industry further to the East, but California's isolated position and her status as a deficit area has not caused it to start here yet, according to the manager of the Beef Council

Some of the reasons for integration in the livestock industry were detailed by Extension Economist G. Alvin Carpenter, in a paper submitted to the committee.

Many of the factors encouraging vertical integration in farming have come from developments in food merchandising. For example, chain stores may receive ample supplies of choice beef at certain seasons of the year, but relatively light supplies of the type of beef they want at other times. If cattle feeders were under contract with

¹ Leshe Hubbard, Petaluma Hearing, November 23, 1959

² Edward C. Clark, San Diego Hearing, December 2, 1959

packers and packers in turn had a contract or sales understanding with retailers, arrangements could be made for a continuous, ample supply of uniform grade of beef to the retailer. Many packers have a problem of assuring sufficient supply coming from feed lots in order to service their outlets on a continuous basis. Many packers consequently use the contract method of integration or some other method to assure steady supplies of the types of cattle or livestock they need to service their outlets and maintain their share of the market.

Most packers are confronted with the problem of high overhead costs. Anything they can do to reduce unit costs of operation is to their advantage. For example, if the packer hires enough labor to process meat when market receipts are heavy, then when supplies are smaller, as has been the case in recent months, he must either curtail his labor force or else work them less than 40 hours per week. This creates a labor cost problem since approximately 50 percent of his expenses are for labor. On the other hand, if he had a uniform supply of livestock, his cost problem and maintenance of market outlets would be far simpler. Consequently, he is interested in contracting or integrating operations to assure him a more uniform supply of livestock for slaughter.

Consumers want uniform quality and quantity as well. Most housewives have a relatively fixed budget for meat. If prices for meat vary, due to changes in supply, housewives may vary their purchases of certain cuts or they may use substitutes. Retailers consequently like to have uniform supplies and uniform quality to develop and hold their customers.

Integration as we have tried to define it offers them this opportunity. For example, a supermarket chain in November, 1957, ran this advertisement: "There is no turkey taste like fresh turkey taste. We raised 40,000 fresh turkeys for your Thanksgiving dinner. We purchased 40,000 turkey poults and shipped them to farmers in this area. Broadbreasted turkey is famous for its greater amounts of white meat and its delicious flavor." Then note on this part of the advertisement, "Specially selected poults fed to our high standards of quality, carefully raised by us, cleaned and dressed by us, packed in crushed ice, and rushed fresh to you."

Such operations as this point up an important reason for large retailers to integrate all the way from the producer through the processor to the consumer. Will those operations come in the cattle or hog industry? It remains to be seen.

There is some integration of hogs by means of contract farming, according to the State Department of Agriculture, but the industry itself is comparatively small in California.

5. Canning Fruit and Vegetables

Integration by grower-owned co-operatives also exists here, with Cal-Can, the growers' organization, now being the fourth largest cannery in the State.

At the Stockton meeting, growers in the Northern San Joaquin area were very worried about a resurgence of full and partial integrating activities by packers.

A member of the San Joaquin County Farm Bureau's Legislative Committee stressed the integration in cannery operations as a menace to the family farm

Corporations right in our own community (Ripon-Escalon) . a half mile from my place . a cannery purchased 550 acres with all peaches in them . I do not know whether or not there is any law in the State that would prohibit carrying over funds from one (type of) concern to work on another side of the fence . That is happening (on) a large scale in our community, in our territory . We see it . Many canneries have got their own acreage . What is going to happen, 550 acres of peaches are going to go into full production . (When this happens) where am I going to go with my 20 or 40' . These things are creating a panic among these smaller growers¹

He said there was no apparent benefit to consumers from this process, using tomatoes as an example—where the tomatoes in a quart can cost the cannery 2½ cents as against a shelf price 10 times as high . In peaches, he placed the margin at 9 to 1 .

It was brought to the attention of the committee that the tomatoes in a 26-cent bottle of ketchup has about seven-tenths of one cent worth of tomatoes in it . The bottle cap itself costs much more than the tomato product . The committee was urged to look into the matter as it would seem the producer has been getting the short end of it .

Secretary of the San Joaquin County Farm Bureau, believed some government action to disassociate processing with growing should be taken, and added that the renewed activity of the packers had caused an upturn in co-operative activity to check it . He stated:

That cannery comes out and buys a lot of land, plants the crop which it is processing . The farmers realize they are going to be in direct competition with them, and they feel this could very easily drive the price of the product (they) are producing down because they are competing with them in production as well as being in the manufacturing end of the deal over here²

An empire grower and head of the Peach Growers' Harvesting Committee commented that he was a member of the Tri-Valley Packing Association, a co-operative, and that the money in peaches was not made in canning this year . He said that the need for a good distribution system is the main headache .

He felt actual purchase of land by canners was not as great as the practice of assisting a grower in buying new peach land and then tying him up for a 10- or 15-year contract which is -

In a sense . . . the same thing as the canner having that land . . . each (such contract) weakens the bargaining position of the growers which, I feel, is detrimental³

Throughout this part of the State there is also an immense amount of contract growing of tomatoes and other vegetables. This process

¹ John Woodstra, Stockton Hearing, November 20, 1959

² Charlie Cooper, Stockton Hearing, November 20, 1959

³ John G. Veneman, Stockton Hearing, November 20, 1959

has grown up over many years since canners must have an assurance of vegetables to keep at work, and growers want the assurance that they will have a market for crops which cost a great deal to raise and harvest

6. *Minor Crops*

a **Strawberries.** The recent alliance of John Inglis Company and Driscoll and Associates with respect to strawberries is an example of an integrated operation. The Inglis concern is located in Modesto while the Driscoll operation has headquarters in the San Jose area.

b **Brussels Sprouts.** The John Inglis Company—Acme Farms operation is a second activity where joint determinations are made with respect to production and marketing operations. Acme Farms is located at Santa Cruz.

IV. IS VERTICAL INTEGRATION AN EFFICIENT WAY TO RUN A CALIFORNIA FARM?

There is a considerable amount of vertical integration of various types of California, but fully developed integration appears to exist only in the poultry industry.

Dr. Carpenter in a question and answer sheet on vertical integration, he submitted, said that vertical integration and contract farming was both a threat and promise for the farmer.

It is a threat for the inefficient, high-cost farmer because he can't sell and make a profit on the same market as the more efficient integrated operation.

It is a promise for many capable farmers who will find an opportunity to expand their business, reduce their risk, and increase their profits.

On the other hand, the manager of the Turkey Advisory Board for the State of California commented on this subject at Fresno this way:

With your permission, and this is my own opinion, we believe that the people who had the financial ability to remain in the turkey industry, who were able to maintain their, if you please, "head above water" through the early fifties (people), who we thought were efficient people because they didn't become involved financially with any organization, had to quit the business, so now we have people who may or may not be efficient but were not able to maintain their (independent) position in the industry who are now producing all the turkeys.¹

Independent integrators themselves begged the question, pointing out that they were in integration perforce, that it was simply the only way there was any hope of profit for themselves at a time when nobody could afford to pay for their products because prices at which birds were being sold were below the full cost of a reasonably efficient producer. At Petaluma, a member of the Allied Poultry Council and turkey and fryer rancher, stated:

¹ Eugene Beals, Fresno Hearing, September 29, 1959.

... We started out as poultry buyers and as recent as 1957, we bought about 95 percent of our birds from the outside and produced about 5 percent ourselves. In that short period of time—two years—we were forced into a position of having to produce our own birds because we had our markets established in San Francisco and the East Bay, in order to continue to supply these markets we had to either put people in business or we had to go out in the field and contract and become integrated. So we decided to take on the basis of becoming integrated so that we would have a steady and continued supply of good quality birds.

Now, basically, our contract followed the three-fold program. We establish a base which we feel is a bare minimum to take care of a man's labor, his rent, and depreciation of investment that he has on his place. We in turn then give an incentive program to help him do a better job on his ranch, and then we have the third phase of the share of the profits. As the price goes up over what we establish as a cost basis then he in turn shares in the profit itself. Now this hasn't taken place this year practically at all because our costs have been below (corrected) HAVE BEEN ABOVE the prices we received for our products so he has only been working on what you would call a "base" and an incentive program.

The effects on the grower has been this that the small man—I am referring to the man who is only producing about 30,000 birds a year—(30,000 fryers a year) has been encouraged by us to go into another enterprise if he had a trade or to take what little reserve that he has and find something else to go into because he just could not stay in the business. This is a business now where the margins are so low you need to maintain a volume in order to stay in, but it's not a case we have to be big, it's a case where you have just enough volume that when the margin is above cost that you should be able to stay in business.

We in turn have encouraged the efficient producers to rent or take over the places that the people that have gone out of business, therefore, giving him the proper size to take care of the base price that we are paying him so that in turn he is making a substantial living in this community. It's reached the point though now that because of competition from the birds coming from out-of-state that no other—that we in this community to compete with those birds we have to lower our base. This is some of the effects that are taking place on a vertical integration.

We have found in the past, in the year and a half that we have been in the business, that the farmers who have co-operated with us in this horizontal integration have liked it much better than in the position where they were before—where they had to assume all the risk of the loss and all the risk that was involved in management and responsibility of keeping up with new and things that were taking place in the industry. They knew at the end of a race, at least they were coming out in the black. We, as integrators, of course, had no idea until the time came that we sold our products. We have found that competition from out-of-state has made production in the State very hard to compete with. It's not so much that our production costs are out of line. We are now producing

birds for around, I should say the State as a whole, is producing birds for around 16 to 18 cents a pound on a raw cost basis. Birds are being produced in other states from on the average between 14 and 16 cents a pound.

What is hurting us in this area is in the distribution and processing cost. They (are) in turn are being able to do—process a bird there between 4 and 6 cents a pound. We in this area find that our costs are running between 8 and 10 cents a pound. Now this is a differential of around 5 cents and this is the point that makes it pretty rough for us—necessary to compete with these birds from out-of-state. And what is happening? A lot of concerns who had at one time anticipated building concerns near the local market areas are now in turn moving into the area where they have a low-cost labor, lower taxes, lower land values, in turn are moving over in those areas and bring the product, as an example

Campbell Soup which we hear is planning to leave Sacramento and go into the South are finding it's cheaper to bring over a chicken pie than to buy a live bird here in Sacramento. And this is the kind of competition that we are faced with.¹

Sonoma County's largest independent integrated feed man said—

I did not start integrating because it is an efficient way to raise birds. I started because unless I did integrate there would be nobody left in the county to buy my feed. The independent efficient farmers who were my customers are simply now dependent efficient farmers. The situation is not to my liking.

Let me ask you this. Is a Georgia farmer who is making 15 cents an hour an efficient farmer? If he lived elsewhere he could make that as an inefficient basement cleaner.

Is a large feed company which is sharing in the sale of poultry at prices which do not take into consideration depreciation or interest on the investment in the ranch and its buildings where the poultry is produced, producing efficiently? Any accountant will tell you "don't be preposterous."²

V. WHAT ARE THE EFFECTS OF VERTICAL INTEGRATION?

1. On the Farmer

With not many exceptions, the growers and processors who testified at the hearings felt that, under vertical integration, the farmer was becoming worse and worse off and that this was true of the efficient farmer as well as the inefficient, that every time the farmer tried to correct the situation by becoming larger or more efficient, he only made the situation worse, and that normal correctives to low prices resulting from overproduction did not exist in a situation where, as Dr. Miller of the USDA put it, "Commodities are being produced to market, and not for the market" with the incentive to produce being the profits residing in the sale of supplies to the grower.

A Windsor poultryman, analyzed it this way at the Petaluma hearings: Integration, by stimulating overproduction just for the purpose of consuming feed, etc., affected everyone in the industry through the

¹ Bill Sevel, Petaluma Hearing, November 23, 1959.

² I. A. Barlas, Petaluma Hearing, November 23, 1959.

low prices it brought, he felt. He believed that in days past, there were bad times, but recovery from them was much quicker because farmers would perforce adjust their operations. Under integrated operations, the integrator's answer to overproduction and hard times was more chickens—as long as the feed could be sold at a profit the investment in the ranches would be earning some money for him.

He felt that today's times were an example of this, with many poultrymen 'going out' but more being put on the empty ranches by integrators. The current situation shows extremely low egg prices but an enormous hatch, slightly below last year, yet much above 1957, so low prices will continue.

He described the grower and the industry under vertical integration as on a sort of treadmill. The grower can't pay back his loans because of low prices, and the company, in order to make the investment bring in something, put more chickens on the ranch which depletes prices even further.

Secretary of the California Egg Producers' Association of Sebastopol, who had 8,000 layers and 4,000 growing birds, and who markets his own and some of his neighbor's eggs, used an article by Robert C. Baker, Cornell University food technologist, written for the Vineland, New Jersey poultrymen, as a classic analysis of the poultry industry under vertical integration.

Like many of the people, I have been doing a great deal of thinking about the situation that the broiler industry is in today—the more disturbed I get.

I'll have to admit that I do research work and am not as close to the birds as I used to be. I still find plenty of time however, getting people to consume more poultry meat. For years I have done everything in my power to get people to eat more broiler meat. Many a night and Sunday I have had organizations put on barbecues.

I've done this gratis just to help the poultry industry. What good has it done? Everytime we get the American people to eat one more broiler, two extra ones are grown.

We have done everything possible to grow broilers more efficiently. In the last ten years, due to increased efficiency, broiler growers have cut the cost of growing broilers by more than 8 cents a pound. This should be a feather in the hat of the industry, but what has happened? Has it meant more money in their pockets—anything but?

Costs Cut 8¢, Prices Cut 18¢

Believe it or not—in the same 10 years that we have cut costs by 8 cents a pound the live price of broilers received by poultrymen has dropped over 18 cents a pound. In other words, by becoming more efficient, broiler men were rewarded by losing money.

The reason for this predicament, as far as I am concerned, is that we have ignored the most basic law of marketing. The one most of us learned before we were out of diapers. Namely, the law of supply and demand. When you ignore this law, the experts say, you will be in trouble—brother, we are in trouble in the broiler industry.

We are producing more broilers than we can sell at a decent price. You can talk promotion all you want, and here I do speak from experience, but it won't solve your problems. With oversupply you have to lower price to a ridiculously low level to move all of the products . . .

Feedmen Should Get Out

The answer as far as I am concerned is for the feed people to get out of the broiler business. They got us in this trouble so they should get out.

A recent survey showed that 95 percent of all broilers grown in this country are financed, and 75 percent of these flocks are controlled by feed companies. For my money, the feed people are running the broiler industry and it just isn't working out.

I fully realize that in theory, integration looks good. I'll have to admit that I was at one time convinced that in the future integration would be the answer. On paper it looks like it should provide for greater efficiency because of larger units, marketing should be more efficient because of fewer individuals with a larger number of broilers. It seems that it would be easier to control the prices received because fewer people are doing the marketing.

But the weak link in the chain however, is supply. True, it shouldn't be because of fewer operators, but it just doesn't work that way.

Every feed company in the integrated set-up tries to move more feed than his competitors. This increases production and drives the prices down. Finally, feed companies find that their margins have been cut on feed—the only logical answer is to move more feed and it means financing more broilers. What happens?

This becomes a vicious circle and the broiler prices drop and drop. How down can they go? Well, I think we will soon know.

At Fresno, a processor of fryers and broilers, agreed to submit copies of his own contracts to the committee. He agrees that the farmer cannot make more than caretaker's wages under the contract system.

A representative of the Valley Oak Grange and speaking for the State Grangemaster, said at the Stockton hearing that:

Now, in our poultry—our troubles began about 1945, at the beginning of antibiotics which made it possible for one man to carry—take care of tremendous flocks. It made it safe for the bankers' investment so that the banker came in the picture. Before that—I'm going to get that in more simple language, the only one I know—when I went to the banker a few years ago, he said, "What are you going to keep your hens healthy with?" "How are you going to keep them from dying?" "If I loan you some money, all your hens are liable to die off." I haven't exaggerated, that's the truth. Today, the same bankers in the same buildings are loaning money to the feed companies to expand to no end. Now, at that time it was a poor risk because—I could stay in here and name a dozen different diseases that would wipe a man out if he

¹ Charles Chorney, Petaluma Hearing, November 23, 1953

wasn't awful careful, especially if he had too many to take care of. That was about 3,000. Today 3,000 is scoffed at, and many taking care of 50,000 couldn't have taken care of 3,000 20 years ago. I know I've produced since 1924.

The beginning of antibiotics has made it possible for the banker to go in the poultry business. If you look it up, that is the day that our troubles began. They didn't jell until about 1953 or 1954. They began to accumulate these hundred thousands hens, and as you know the feed business is good as long as you can make an overall net, for labor is taken out probably in these feed companies around a dollar a hundredweight. If they can, a lot of farmers out in the field feeding a hundred sacks a day, they don't need any profits off of the birds that they sell to these farmers or that they take from them. They need only make that dollar a hundred. . . . So we feel that if something could be done on . . . something could be done so the credit wouldn't be so easy. . . .¹

The Santa Barbara County Agricultural Commissioner mentioned that the county has not had the problems faced by other areas of the State from vertical integration, which was described as being a control of commodities from production to marketing. The danger of farmers losing their independence by credit being in the hands of the integrators, rather than being secured from a bank or other source, was cited.

At San Diego, a member of the Vista Co-op read into the record a list of large nonfarmers who were buying into the distressed poultry business.

We are concerned about our future as poultrymen. As increasing reports come from all parts of our nation about "Integrated Egg Production Plan at Searcy, Arkansas" (*Poultry and Eggs Weekly*, November 7, 1959), "First Integrated Layer Program for Beebe, Arkansas" (*Poultry and Eggs Weekly*, October 17, 1959), "Lever Brothers Buys Rockingham Poultry Plant" (*Feedstuffs*, October 31, 1959), just to name a few, our concern increases. Instead of looking for the cause of our trouble in other states, let's look at the cover feature of the *California Farmer*, October 10, 1959, in their special Poultry Feature Edition. The front cover reads:

"More Eggs Yet? Big new poultry plants continue to be built while more and more 'mom and dad' flocks fall by the wayside in the wake of the industry's low prices and overproduction problems of recent year. The 'egg factory' in Monterey County is planned for an eventual 360,000 layers, making it one of the nation's largest. Size and efficiency—plus modern integration and financing—are the only factors allowing many operators to stay in business with today's low profit margins."

California poultry business, with a farm income of better than a quarter billion dollars, accounts for about one-fourth of the total cash receipts obtained from all livestock last year. Receipts from eggs in 1958, were 12 percent above 1957, as a result of higher prices for a record high production of 4,871,000,000 eggs. Result was a larger hatch last year . . . more layers this year . . .

¹ Stanley Jenkins, Stockton Hearing, November 20, 1959

and steadily declining prices of eggs leading to lowest July figures since 1940.¹

At the San Diego hearing, an independent egg producer and member of the San Diego Co-Op spoke his viewpoints:

And having watched the results of government in agriculture, as a whole, over the last few years I, as an individual poultryman, most definitely don't want . . . or in other words . . . I want government to stay out of my business.

Well, I think it would help agriculture as a whole if they get out of agriculture completely and let the situation clear itself, and it would. Incidentally, if I may digress a little, to me our surplus situation in everything is a thing that has built up since the war, due to the fact that a man can overproduce a product and get paid for it, to me is wrong. And I can see the same situation occurring in my business. They talk about . . . like you said, people up North going broke . . . Well, I am not going broke and I have what I would call a semifarm . . . or family operation.

I maintain around 14,000 laying hens. And if I have to I can operate it myself and understand me, I don't like to work that hard, and I do hire help. And I am paying my help and I am still making a little money today, even as of last week we are showing a profit . . . and the situation is bad. I believe I am not making enough money.

. . . I have read all I can on vertical integration and so on, and yes, they have definite advantages in the marketplace. But I will say this, that I don't believe there is one of them that can produce an egg as cheap as I can and I go on record as that.

. . . I cannot see where passing legislation is going to help my situation at all. I am not content to sit at this point and try to—well, even with a ranch of my size—like I say, if I am making a cent a dozen I am making \$60 a week, I could do much better down in Convair, I can't live on \$60 a week, but I don't believe that this situation will remain at that point.²

A poultryman, who has a flock of less than 4,000 at Santee, said that:

. . . I have made a living there for the last seven years and believe that I can continue to make my living. I want no controls of any kind so that I can if I like get bigger or smaller or go out of business or go back in because I worked for the other man for 20 years and trying all the time to get my own business, and I want to keep it my own.³

Faced with the testimony that it takes a much bigger flock to make a living, he said: "It depends on how you want to live, doesn't it?"³

In answer to a question as to why California can no longer raise fryers, a member of the Palomar Poultry Co-op told, at the San Diego meeting, the story of a fairly large operator next door to him who

¹ Mrs. Eva Weiner, San Diego Hearing, December 2, 1959

² Thomas Gagin, Jr., San Diego Hearing, December, 1959

³ John McSwain, San Diego Hearing, December 2, 1959

raised them for an integrator 40,000 at a time in five houses. He is paid 2½ cents a pound for raising the birds but is, in effect, a laborer, since he has a \$40,000 investment in the houses, interest on which, together with taxes, must be deducted from the gross per bird before labor income can be arrived at.

He commented.

I heard one man say here this morning that these big mills . . . are not interested in something that's going to lose them money. Well . . . a big feed mill is interested in being in the egg business as long as it doesn't cost (them) money. If they have a captive market for that feed they don't give a darn whether they make a cent off the chickens or eggs . . . they'll make it off the feed and they don't care about . . . whether they are going to pay me anything or not.¹

He talked of 500,000-hen operations about to start in the county and of many smaller operators seeking to become large by making up for lower prices with more eggs.

2. Effects in Other Industries

Secretary of the Butchers' Union at San Jose, said that his union is vitally interested in integration because of the loss of jobs for butcher workmen resulting from the transfer of the fryer industry eastward.

He repeated that in livestock integration, which has not yet hit California, the most serious result for the farmer has been the nearly complete destruction of the free market, not only for cattle, but also for feed. All independent growers are subject to price specifications by the large integrating companies.

3. Effect on Suppliers, Processors, Distributors

Processors felt that they, too, were trapped, and that the end result of integration would be of no benefit to them, a feed dealer said at Petaluma.

Co-owner of the Bundesen Bros. Hatcheries, which has plants in Petaluma, Riverside and Newburg, Oregon, said, that five years ago they shipped broiler or fryer chicks to 200 customers in the Petaluma area. Today, because of the inroads of vertical integration, there are hardly a dozen in the area in a position to buy chicks for that purpose.

In the egg production business, this attrition has not gone nearly so far yet. I think in matters of economies they are probably two or three years behind what the fryer industry has already gone through, and if the trend that has been established in the fryer industry is allowed to continue into the egg industry, certainly it will only be a matter of time before some of the same effects will be seen. There isn't a week goes by that we don't cross off at least three or four people that have gone out of business. This has kept on just about a year long. So this is definitely dealing a tremendous hardship. People say that this is good for the industry, makes us more efficient, consumer gets cheaper eggs, and this is what we are in business for—sometimes it sounds like a period of cancer is good for you. I don't think this right. I am not entirely

¹ S C Geasy, San Diego Hearing, December 2, 1959

full of solutions either, things that have caused this, our hatcheries . . . we are not alone. In the past we've encouraged production, the shelf products, the feed mills, are primarily engaged in getting tonnage, magazines have glowing articles about the profit possibilities of poultry and what different individuals are making and they encourage expansion, everybody is encouraging expansion, but the basic factor remains that we have sufficient and in the egg industry it's conceivable that within the next 15 years at least, we would not need any more chickens than what we have today. Even with the increase in population, the additional eggs per hen would take care of the increase in population and so actually there is no reason for this tremendous expansion to be taking place. This is promotional on the part of various peoples who are almost helpless in themselves in the grasping for business. Again, I wish I had some more solutions to offer, but I don't.¹

Asked whether he meant that the promoters of integration are themselves helpless, he said:

Well, as you lose customers and to maintain a volume and take care of your overhead, you either are going to have to create new business or else manufacture somewhere along the line or else get out of business yourself. And everybody in this industry today is engaged in the battle of survival, and their acts are predicated on that condition.

I feel as they lose customers they are either going to have to get into business for themselves to maintain that volume or they are going to have to expand producers that they have to continue the volume.

Well, human nature would indicate that. Even us poultrymen, as the margins grow smaller they have to have more tonnage to make the same income or at least they want to maintain their position.

I'm certain the law of supply and demand as it applied to the poultry industry is certainly not in the same position that it was 20 years ago. I'd say today products are produced irregardless of what the consumption might be within the various patterns in the industry.¹

The only way we can afford to abide by the law of supply and demand, he said, is at the expense of the existence of the small producer, and if we lose him we have lost something important.

A grower and distributor from Sebastopol, described the vicious circle he had seen in egg and poultry marketing: the store putting in a special for eggs, then asking the distributor to make concessions so they won't lose too much on the specials, the specials recurring again and again and the average working margin of the distributor being lessened so that he, in turn, exerts pressure on the grower. In the public's mind, the below-cost prices have become standard and normal prices exorbitant. Therefore, antiloss-leader legislation is badly needed.

At Fresno, another independent processor, who has had to integrate growers, said that the margins of the integrators themselves are nar-

¹ Herbert Bundesen, Petaluma Hearing, November 23, 1959

rowing to the point where the operation is unprofitable overall. He strongly supported turkey, broiler and egg self-help (marketing) legislation as a means of getting him out of a business he was reluctant to get into and back to processing, pure and simple.

At Riverside, it was said that local feed mills would be out in the cold when the independent producers were finally forced out, but just haven't got to the point yet where they are willing to testify.

He added, however, that several of the large national companies have pulled out of the area entirely, because they do not want to go down with the poultrymen here, and because they can do even better in the South. Local feed men are in a bad way, as bad as the poultry and egg men because they are carrying 150 to 200 accounts of varying degrees of badness. He stated that he knows of a dozen or more Yucaipa poultry and egg men who have pulled up stakes in despair this year—this amounts to 11 percent of the total in the area. There are, however, new houses "going up today"—"dreamers," he said.

4. Effect on Communities and Others

Since the poultry areas which are hardest hit by vertical integration are usually near cities which are expanding, it is difficult to identify any gross and obvious effects of hard times and consolidation in the poultry industry.

However, in a discussion of the situation in Petaluma early in 1959, a chamber of commerce estimate of a 40 percent decline in wholesale business because of the decline of the egg industry was made.

A farm adviser, familiar with the Sonoma County scene for a dozen years, summed up the situation here with the statement that poultry income in Sonoma County once stood at \$8.5 million dollars and has now dropped to \$2.1 million because of low prices. It has affected the economy of the whole county, he said. (Montgomery Ward closed their Petaluma branch the day before the committee arrived).

When you lose \$17 million it does hurt the economy of the county, and it is real time for people like you to come out and discuss these problems with the farmers.¹

It was noted that Sonoma County had declined from a total production of 32 percent of the State's eggs in 1940 to but 9.6 percent today, but an absolute decline of about 22.5 percent in the number of eggs produced. He saw two reasons for this: one, the reluctance of some of the older producers in this pioneer egg area to change over to modern systems; the other, "much more liberally given financing" by "feed producers and other financing concerns" in Southern California. Why this should be in an egg-surplus area like Southern California, he did not know.¹

The chamber of commerce representative said that he had been here long enough to see the importance of poultry and dairying to the city. He said several businesses have left the area since hard poultry times began. Local businessmen, he concluded, were "acutely aware" of the poultry industry's problem and

I wouldn't say they were afraid of the future, but they are a little uncertain and anything that your good committee and

¹ Virgil Stratton, Petaluma Hearing, November 23, 1959.

your colleagues can do to help the situation through meetings such as this, we appreciate ²

A statement to the committee from the Butchers' Union, submitted supplementary to their appearance at the San Jose meeting, covering the general subject of the effect of farm decline upon other segments of the economy as laid out in a letter from their national organization to the House Committee on Agriculture, said that

. . . the members of all local unions of the Amalgamated Meat Cutters and Butcher Workmen are hurt by the catastrophic depression of egg and poultry prices

The Amalgamated Meat Cutters and Butcher Workmen has 375,000 members. More than 30,000 of them work in the poultry industry.

The danger of monopoly growth in the industry, which becomes more imminent as more and more independent growers are driven out of business, will be harmful to our members both as consumers and as workers in the industry

The often-proved concept that consumer's purchasing power of both farmers and consumers must remain high if either group is to prosper, is being violated by the economic hardships of poultry and egg farmers. The fact that the farmers are not able to buy the products which provide jobs for labor is dangerous to the economy and to our members

We believe that for the sake of the well-being of the Amalgamated Meat Cutters and Butcher Workmen members, poultry farmers must maintain and increase their purchasing power

VI. IS VERTICAL INTEGRATION INEVITABLE?

Dr Sidney Hoos of the Gannett Foundation spoke at the Davis meeting:

Integration is not really something new. In fact, in various forms, it has occurred in California agricultural marketing for a good many years. Some important features which have only recently attracted attention in other parts of the country have been occurring here for several decades.

Is integration good or bad for farmers? In a logical sense, integration is not necessarily bad or necessarily good for farmers. Also there need not be a logical limit of integration. It may occur in practically all agricultural products or crops. The essential point is whether the economic incentive exists for some party to undertake the integration process. Thus, to put my view in another way, I would say in answer to one of Chairman Geddes' questions, that vertical integration is not inevitable. My own view, again in answer to a question of the chairman, is that integration as it is presently occurring is not something that should be checked. In fact, I doubt very much that within the political and economic institution within which we presently live and operate, it is feasible to check effectively, the existence and growth of vertical integration.

² Donald H. Thomas, Petaluma Hearing, November 23, 1959

I would say that the legal and economic environmental climate, should be such that any economic group that wishes to parent the balance being taken in integration should have the opportunity to do so. The opportunity for the development of vertical integration in California agriculture has long existed. And a good many farmers have taken advantage of such opportunities. Whether the climate for such activities on the part of farmers can be approved is a matter of personal opinion. Personally, I doubt the wisdom—not to mention the practical feasibility of legislation outlawing processors from operating farms which is a form of backward vertical integration. This is in connection with a point also raised by Mr. Geddes. Also, I would doubt the wisdom of the effectiveness of legislation to control the processors farm operations. Another way to state my view, is that if one were to consider legislation to outlaw processors to operating farms or to control the farm operations of processors it would be just as logical to have compensating legislation to outlaw farmers from operating processing plants or to have legislation controlling the integrating operations of farmers.

In recent years, in fact, we have had increased activity in integration on the part of many California farmers. These activities include, in addition to the usual co-operative marketing, we now have a substantial growth in co-operative bargaining and co-operative canning. Although not a new development, co-operative bargaining associations have reflected in recent years an upsurge. Their major objective is the sale of their members farm output to canners.

Established under agricultural co-operative legislation such co-operative bargaining associations are oriented to particular canning crops. A co-operative bargaining association need not, and generally does not, have contracts with and sells to all of the canners packing the particular crop.

The relative bargaining position and the price leadership effectiveness differ among the various co-op bargaining groups. Some growers do not avail themselves of such an avenue in the sale of their crop, while other growers of the same crop view their bargaining co-op as a valid and meaningful way to protect the growers' interest. The extent of such different attitudes among growers of canning fruits and vegetables varies from one bargaining co-op to another, and one crop to another.

Grower co-operative canning. In California there have existed for some time, two established fruit and vegetable canning co-ops which continue to operate successfully. In fact, in the early 1920's we had quite a lot in the State.

Relatively recently, a third fruit and vegetable canning co-op, in essence, was inaugurated through co-operating growers purchasing the facilities of two established private canneries, and later acquiring two more through long-term purchase agreements.

This is integration. From the view of co-operating growers, their participation in co-operative canning has an advantage of helping to assure an outlet for the grower's raw product. Their co-operative generally stands ready to receive their crop for processing, regardless of the market situation for the raw or processed product. Thus,

a co-operative cannery may reduce, or even eliminate the co-operating grower's risk of not having an outlet for his farm products. Yet, a co-operative cannery does not entail only advantages to the participating growers—there are also limitations or disadvantages. One of the major of these disadvantages is the taking on of the risk—can they carry—usually by the private canneries.

Dr. Carpenter flatly states in his "Questions and Answers Relating to Integration in Agriculture" that:

Yes, integration is here to stay. The big question is "Who will be the integrator?" Integration will continue to expand as long as it reduces costs and risks of production and marketing as well as prices paid by consumers for finished products. Integration tends to provide greater production and marketing efficiency and as long as this is the tendency it will survive and increase.

A representative of the San Diego Co-operative Poultry Association said, however, that:

The present growth of vertical integration is neither new nor alarming. Good profits draw investors' capital to any industry. The lack of profits will as quickly remove that competition.¹

Others at the same meeting had pointed out that the final profitability of the crop had little, if anything, to do with the activity of the integrators, who made their profits at another stage in the operation.

VII. HOW MAY NONFARMER FINANCED VERTICAL INTEGRATION BE CHECKED OR CONTROLLED?

1. *The Agricultural Situation*

Vertical integration cannot reasonably be viewed apart from the general situation in agriculture. While it has reinforced some of those tendencies, the present strength of the integration movement could never have come about if it were not for tendencies inherent in the organization of agriculture, tendencies whose effects have intensified in recent years.

Dr. Eric Thor of the Giannini Foundation prepared for the committee a paper analyzing the farmer's response to the perennial situation:

The "cost-price squeeze" is probably the major problem facing California Agriculture at the present time.

Net income to farmers in California has declined more than 25 percent from the high year of 1951. This decrease is the result of increased production expenses paid by farmers and lower prices received by farmers for the products they sell.

Farm operating expenses in California have increased approximately 44 percent during the past decade. Interest on farm mortgages and short-term notes have risen sharply. Wage rates have risen almost continuously. Prices of farm machinery, farm supplies and motor vehicles have also shown substantial price increases. Fertilizer prices are about the only production input which have remained relatively constant.

¹ Hart Dunham, San Diego Hearing, December 2, 1959.

In sharp contrast, the prices received by California farmers for the products they sell have dropped rather drastically. Index data on the average price received for all commodities are not readily available by states. However, since California farmers compete in the national marketplace, the national farm-price indices are indicative of the State's position. The index of prices received by farmers for all commodities have dropped from 295 in July, 1952, to a present low of 234. The index of food grains dropped from 230 to 196. Feed grains and hay have fallen from 227 to 152. Cotton is down from 311 to 273. Fresh market vegetables declined from 360 to 248. Dairy products dropped from 304 to 258. Poultry decreased from 212 to 151.

The present "cost-price squeeze" is such that a large portion of California farmers are finding it difficult to "equate" production expenses and income.

To relieve the squeeze, they have used the same inherently self-defeating methods as always.

Farmers, in order to increase net income, have historically sought technological improvements which increase crop yields and animal output per unit. These technological improvements, which have been one of the most dynamic factors in improving real income and increasing living standards for the masses, are really the force behind the "cost-price squeeze" facing California agriculture today.

The effect of this economic force is not well understood. Most people do not realize that agriculture has reached a point where production, as a result of increasing efficiency, is increasing faster than consumer demand. This increased production is reducing agricultural prices in the market place.

The majority of nonagricultural people do not understand why farmers cannot slow down the rate of increasing production to coincide with the rate of increasing demand. They do not realize that in the struggle for economic survival the farmer must continually adapt new ideas or be forced out of agriculture.

This struggle, which has three economic states, is almost endless. It begins when a few progressive farmers, who are continually keeping their ears tuned to new cost-reducing, output-increasing developments, adopt a new improvement. Thus, these early users increase output. However, this increased output by these few is not enough to affect the market price to any degree. The economic result is an increase in profit for the early users.

In the second state, other farmers become aware of the success of this new technology. They hasten to adopt it. In a relatively short time, the aggregate output of the product is noticeably increased and price in the market place declines. Since most agricultural commodities have an inelastic demand, one in which an increase in output will cause a more than proportional decrease in price. The decrease in farm income is generally greater than the reduction in producing costs, thus, the result inevitably is a "cost-price squeeze" such as we are in today.

The third economic stage is one of the adjustment, one in which the "cost-price squeeze" forces farmers out of production.

In nonagricultural industries, the cycle would stop when the shop was closed. But in agriculture, the "cost-price squeeze" cycle is almost endless. As some farmers leave agriculture, other farmers in their efforts to reduce cost by increasing their size of operation take over the farm lands. Consequently, production does not decline as the number of farmers becomes smaller. Thus, it is easy to see that the real cause of the "cost-price squeeze" is the volume of agricultural products marketed. We are producing more than can be marketed at prices that yield reasonable returns to the producer.

The general procedure in the nonagricultural industries, whenever inventories are increased to the point where supply tends to force price reduction, is to lay off workers and close down plants until supply and demand are again in balance. In agriculture, this simple type of balancing of demand and supply is impossible. Farmers cannot close down and start up their production facilities to maintain this balance.

What then can be done? One way, of course, is to "muddle" along as we have been and let the farm income situation get worse and worse. This will eventually--perhaps in a generation or so--force enough farmers and resources out of agriculture so that those who remain will have a satisfactory income. This would mean that the "cost savings" resulting from technological improvements would be continually transferred from agriculture to the non-agricultural segment of our economy. It would also mean that our "family-size farm," as we know it today, will probably become a thing of the past.

Another suggested solution which is as unrealistic as the "do nothing approach" is the elimination of technological improvements. This, of course, is impossible and unthinkable. It is impossible because even if all research carried on by our land-grant colleges and the USDA were stopped, private organizations would still continue their research. However, these developments would tend to be restricted by patents, etc. The result could only be one in which the "family-farm" concept would give way to "industrial combines" large enough to support research and experimentation . . .

What then is the solution? There are actually several solutions that would probably work satisfactorily if given a fighting chance. Perhaps most promising of all is an expansion on a national scale of some type of adaptation of the marketing agreements and orders we have here in California .

Without an intelligent marketing and production program on a national basis, the economic forces which are responsible for the present "cost-price squeeze" will continue to intensify and farmers' net income will continue to decline until all but a few of California's farmers are gone.

Also, at the Davis meeting, Dr. James T. Ralph, Deputy Director of the California Department of Agriculture.

Concerning the problem of vertical integration. As we see vertical integration it appears to have some advantages and some disadvantages. The main advantages to vertical integration occur in

the savings in cost of selling. At the same time, there are savings in cost of buying because two or more firms are tied together. There are further savings that result from scheduling together the operations of the supplying and producing firms to coincide with the needs of the processing firms. On the other end of the scale the disadvantages are that the decision-making function is not usually left in the hands of the farmers. Thus, the person who is making the decisions may be in a position to allocate returns unfavorably to the farm producers. This provides a mechanism for cutting down the return received by the producer and for increasing the return that is received by other segments in the production and marketing system. A further disadvantage of vertical integration has to do with the flow of outside capital into agriculture. Vertical integration actually provides a convenient mechanism whereby holders of outside capital may invest in agriculture and thereby serve to increase production.

Our recommendation for approaching the problem of vertical integration is first, that producers who are in a financial position to do so should be encouraged to form their own supplying or processing co-operative to integrate themselves; second, producers who are not in a position to do so should be encouraged to form a bargaining association to bargain with processors for a price on their product or their services; and third, in cases where production is super-abundant and prices have been depressed to an unduly low-level we recommend the adoption of marketing orders to regulate the flow to market and to set appropriate quotas which will cause supply to be more in line with demand.

There were many who testified that scoffed at the idea that the present situation was too serious or would long continue, such as the man, who lives 20 miles out of San Diego and produces fryers and eggs for the market, said that low prices are nothing new and have come along from time to time and supply and demand has always taken care of it—when prices are low poultry men put in fewer pullets and production goes down and the price goes up when the scantier crop of laying hens is in the houses.

Chairman of the Board of Directors of the San Diego Co-operative Poultry Association, spoke at the San Diego meeting.

The current year has brought some hard times to the industry with the result that all operators have been hurt. But as is always true in such situations, some have been hurt worse than others. The tendency to panic in the face of adversity has brought about a great deal of pressure for "somebody to do something." I know that the members of your committee are aware of this pressure. But a quick review of the farming process will show that this is merely a regular cycle in the process of food production. Many programs have been originated to alter the law of supply and demand, but not one has been found that has changed the situation for more than a short period. The National Farm Subsidy Program has been in effect more than 20 years, with the net result of staggering surpluses and back-breaking costs to the taxpayer. The excuse of political expediency would be the only justification for extending this program into other areas. The greatest help that

could be extended to poultrymen today, would be the return of feed grains to a free market

The present growth of vertical integration is neither new nor alarming. Good profits draw investors' capital to any industry. The lack of profits will as quickly remove that competition. The surplus of eggs in San Diego County is not the result of integration. Every producer in the area has been a contributing factor. Before we crusade to destroy "bigness" we should be sure that we are not part of that bigness.

Our producer's co-operative was developed to enable farmers to band together to solve their problems. As a member of this co-operative, I believe we can still solve the situation ourselves. In the interest of economy, we should be given enough time to try. Our program can be flexible enough to amend as we see fit.

Government programs become solid, sacred, unwieldy and perpetual. To catapult the poultry industry into a regulated program, on the current evidence would not be wise in my opinion.

Any operation which is to continue in business will have to employ good management, careful attention to detail, aggressive selling and the production of a good product at a reasonable price. The application of these principles to any business, large or small, will achieve about the same result.

It is an old axiom of agriculture "that you find your money where you lose it." The poultry industry needed and in 1916. Fortunately, the men who originated San Diego Co-operative Poultry Association were not aware that they were to raise chickens at government expense. The personnel of our board has changed many times in the passing years, but I am sure I speak for the present directors when I say that we want to work out our salvation.¹

From a Ramona poultryman in the business over 25 years

I have never thought that government controls and subsidies would be good for my business, and during the past few years as controls and subsidies have become a part of much of our economy, I am sure all of us have asked ourselves the question: would these controls help the poultry industry, and if not, why?

You can be sure, all of us are definitely interested in improving our business, and try to be alert for anything which might contribute to that improvement, but we have seen the position and condition of surpluses such as wheat, cotton and other controlled commodities, so how can we believe the poultry industry would be an exception?²

And Dr. Carpenter restated the traditional position of the land-grant college technologists in a June 9, 1960, issue of "Economic Briefs for California Agricultural Extension Personnel."

There is evidence that many family farm operators are adapting to changing conditions. The farmer must always be permitted to make needed adjustments if the family farm is to remain strong and competitive. Change is the law of progress. We must not fear it. Those who resist change usually perish in the process. There

¹ Hart Dunham, San Diego Hearing, December 2, 1959

² C. H. Owen, San Diego Hearing, December 2, 1959

are those who want the government to protect them from economic changes and competitive forces, while there are others who "gear up" their operations to meet economic changes and thus are still able to compete

2. Direct Government Action Against Processors; Foreign Experience With Such Action

Frequent suggestions were made by growers that processor ownership or operation of farms should be barred. There was even one suggestion that vertical integration arrangements should themselves be made illegal. Poultry and egg producers seemed in general resigned to living with such operations and felt that they would have to be included in any definition of "producer" or no nationwide marketing act would stand a chance of passage.

Dr. Sidney Hoos of the Giannini Foundation commented that:

Personally, I doubt the wisdom, not to mention the practical feasibility, of legislation outlawing processors from operating farms, which is a form of backward vertical integration. Also, I would doubt the wisdom or the effectiveness of legislation to control their farm operations. Another way to state my view is that, if one were to consider legislation to outlaw processors from operating farms or to control the farm operations of processors, it would be just as logical to have compensating legislation to outlaw farmers from operating processing plants or to have legislation controlling the integrating operations of farmers. These views are stated in the context that we still want to retain the essential features of our present type of economic system. Yet, to repeat, I would say that we should improve and maintain the climate where integration may develop if farmers wish to do so.

There has been some experience abroad with this problem. C. F. Adernann, Minister for Primary Industry of Australia, writes that

Whilst there is no legislation in this country which expressly prohibits processors from being growers, the marketing arrangements are such for many commodities that there is little scope for or advantage in this type of integration.

The marketing of many agricultural products is controlled by marketing boards set up under general marketing legislation of a state, under state or commonwealth acts covering specific commodities, or under complementary legislation of the commonwealth and all or any of the states. These marketing boards have been set up at the request of or with the approval of producers. In effect, they are co-operative marketing organizations which are designed to assist orderly marketing, with producers forming a majority of the board members. The commonwealth government's powers under the constitution are limited to the export field and the boards set up under commonwealth laws are concerned only with regulating and organizing exports or undertaking export trading operations. The Australian Wheat Board is the exception; it has exclusive trading powers on both the domestic and export markets.

State marketing boards, on the other hand, are concerned with internal marketing (there are one or two exceptions) and provide a single compulsory channel through which the commodity concerned must be marketed. These marketing boards, particularly those with trading powers, are thus similar to producer co-operatives, except that participation by the producer is compulsory.

Thus, in the case of industries whose products are compulsorily channeled through marketing boards which possess trading powers, there is little scope for backward vertical integration. There are many instances of forward integration, that is to say of producers forming co-operative societies, to process the farm product, and although instances of backward integration are less frequent, they do exist in the vegetable industry for such commodities as peas and asparagus. Wineries frequently draw their supplies from their own vineyards and there are also one or two instances of vertical integration in the meat industry.

Douglas S. Harkness, Canadian Minister of Agriculture, wrote that:

In Canada we have not passed any legislation to directly control vertical integration or contract farming. However, during the past year we have been operating our agricultural price support legislation in such a way as to withdraw support from large commercial operations. We have done this particularly with hogs and eggs, in which vertical integration was proceeding very, very rapidly. At the present time, feed companies, abattoirs, etc., which are in egg or hog production, receive no price support whatever. Individuals, whether bona fide farmers or not, receive support on a limited amount of production per year . . .

As to the success of these measures, production of both eggs and hogs has dropped materially so that we are no longer producing either in quantities greater than the domestic market and our limited export markets can absorb. The effect in discouraging vertical integration has been most noticeable in hog production. So far as I know, practically all feed and other companies have quit contracting, or producing directly on their own account.

3. Checking Vertical Integration Through Vertically Integrated Grower Co-operatives

At the Red Bluff hearing, the president of Cal-Can, the grower's canning co-operative which is now the fourth largest cannery in the State, said:

My statement starts out with challenging times that we have in this integration of agriculture. This is a challenge, indeed, for agriculture because great changes are taking place. Changes that will improve the economic standing of agriculture. Changes that will regain for farmers the economic, social and political standing that is their birthright and that they deserve. Now what are the objectives of these changes?

Certainly to grow just for the sake of getting bigger has no sound basis. The changes we are going to discuss here are those changes in our agricultural marketing system that appear to be

necessary to assure the farmer a profit from his farming operations

The American farmer is operating in a capitalistic society, he is regularly competing not only with other farmers, but with other businessmen and commerce and in industry. He is trying to regain and to maintain himself on an equal economic basis with his competitors. He is seeking means to insure himself a reasonable profit on a long-term basis as well as on a short-term basis. Profit then, is the main objective.

Let me sum up the case for integration as I see it. Those who argue the case for integration point out that an economic society in which the laws of supply and demand can operate in free interplay, businessmen, including farmers, tend to take such actions as are to their financial advantage. Integration has developed because, generally speaking, it's financially good for most of those people involved in it. It evolves, logically out of economic and technological changes occurring in agriculture, and does not in itself cause such changes. An archaic system of production for unknown buyers, who have harvest for the first time, imposed specifications and set prices has given way to a coming of age and a recognition of the economic facts of life. A knowledge of agronomy and animal husbandry is no longer sufficient. Adequate financing and prearranged marketing are essential. Agriculture is now going through an industrial evolution and out of it is coming stability and minimal ration of risk.

The pressure by the consumer for greater efficiency and low prices has created the development of mass food markets which demand volume, dependability of supply, higher and more uniform quality and all at a lower percentage of the consumer's wage. The individual farmer has a choice of meeting these criteria or moving aside to allow someone else to do so. Integration which ties price and specification together serves these needs sufficiently. While the integrated farmer may, in many cases get less profit per unit, he sells more units. Twenty-five years ago, as an example, a poultry farmer got more of the consumer's dollar than he does today, but he now sells more chickens. The farm is no longer a way of life, but has become big business. Like any other businessman, the farmer interested in spreading risk, reducing production costs, lowering prices to increase volume, creating new and assured markets, and obtaining his capital requirements as needed. He can accomplish these objectives by means of increased size to effect production economies and an integrated sales arrangement to lend marketing stability and efficiency. It is, doubtless, true that while integration quite probably stimulates a growth of all its components, farms will increase in size with or without its help. The big will necessarily get bigger. As an example of what may come to pass, only 60,000 farms—each with 100 sows could supply us with 96 million hogs, whereas, normally 2½ million U.S. hog farms produce only about 89 million head. With size, the farmer finds he can profitably use specialists to improve all phases of management, that technological changes can be put into practice more easily on these farms. Does the quest for efficiency actually eliminate compe-

tion, and his size per ? We think not Far from inhibiting a free market, integration may spur the development of better open markets Cases can also be cited where market improvements spurs integration

It is my opinion that vertical integration does not pose a threat to the pricing system The role of price emphasis or dependence on price I think is more likely to be strengthened than weakened by instances of vertical integration I think if Sears and Roebuck and the A&P chain, these monster prototypes of retail integration has been more price conscious and more price competitive than the un-integrated firms they superseded For this reason, I consider vertical integration to be beneficial

Integration probably means greater influence on legislation whether the farmer is a member of a co-operative, a corporation, or simply on the same side of the processor who is his partner Contracts to sell mean an assured market and a foreseeable profit Hence, banks and feed companies are quicker to advance credit The processor benefits because it gives him an assured supply. Integration will benefit beginners through providing capital, know-how, and a reduction of risk Eventually, integration may well have a beneficial effect on our crop surplus problems as an increasing number of farmers tie production schedules into firm sales contracts prior to planting

The Operation of a Co-operative

We are in our third year of operation now We have approximately 1,000 to 1,200 individual members We have practically all the fruit crops We have peaches, pears, cherries, apricots, spinach, asparagus, cranberries, canned fruit cocktail (I am sure I forgot something) grapes These are all individual grower members This last year we finished, we are doing 66 million dollars worth of business The first year's operation we returned to the growers—in revolving fund credits—22 percent above market prices In other words, they are getting credit for 22 percent above the competing market price that they sold to commercial canners We returned to the growers 100 percent of the market price plus credits for the balance of 22 percent This last year's operation we just finished, we returned 115 4 percent of market price In other words, we paid our growers 100 percent of the market price plus credit for 15 4 percent above in revolving fund credits ¹

The revolving fund is used as a reserve that is held back from their receipts, or the same money that they would have received with a commercial operation plus credits which will be revolved in a 5-7-9 year period of time—something on that order This is used to finance the overall operation The money goes back to the management of the board, who makes the decision as to when they are going to start revolving these funds back This type of operation,

. . . came primarily from grower pressure started about six years ago saying that we've got to do something to try and return more margins to ourselves as growers And so we started research

¹ Earl Blaser, Red Bluff Hearing, August 26, 1960

and decided whether we should get into it on a building program or buying existing canners and the decision was made that it had to be a multiple crop operation. We had to have existing outlets. In other words, when we bought these four processing companies we have now, we bought management, we bought labels, we bought outlets—the whole thing. So we are using the whole operation all the way through.

We are in the same markets as commercial companies. We have to be competitive. We are continually striving just as they are in quality or in new outlets or new brokers and that type of thing.

We told our members we are not financing institutions. We are not out here to extend credit. We are out here to do just as efficient job as we can in a processing and in the marketing of your product. And we think that if we get too far astray and start thinking up too many sidelines that we lose sight of the initial thing that we got into this for.

The growers actually have complete control. We have a main board of 25 members that meet monthly. It's composed of 20 growers, plus five in management. So we have majority in management control. We have four subsidiary companies in which some of us sit on these boards which meet monthly—as subsidiary companies we have majority control of those. All main management decisions and policies have to be cleared with the boards.

Our Board members are up for election. The majority . . . about three-fourths of the board members are up for election every year and we like to think that they have to base this their being returned to the directorship on the performance where they have done a job in the district and they are known within the district. We have the State split up into four districts and by commodity also. So each commodity is represented as well as districts in the state and this based on performance whether they get re-elected or not.¹

As to small growers in the organization receiving proper representation on the board

Membership

In the orchard crops, we take membership based on a 15-year contract. And it's based on a legal description of the property. They have to be members for three years and then they can give one year's notice. So we are tied to taking that particular block of fruit. In other words, we can't—if it's a long-crop year we don't back off. We can't do it. But we're hedging on that one in that we do buy a portion on the commercial market from nonmembers which is a commercial business with us and on which we pay taxes on profits and so on. With our vegetable crops, tomatoes which is the big item with us and spinach and asparagus—no not asparagus—spinach and tomatoes are the only two affected. We have a year-by-year basis. In other words, we take the member's application for so many thousand tons, next year in the winter before planting season, the board sits down and decides if we are

¹ Earl Blaser, Red Bluff Hearing, August 26, 1960.

going to cut back in tomato canning that year we will prorate so we will notify the grower that instead of 100 percent of your membership, you may only plant 90 percent. Or if it looks like we want to expand and don't want to take on new members in that particular year, we will say, you can plant 110 percent this year.¹

At San Jose, Managing Director of the Poultry Producers of Central California, told of the spread of vertical integration in the egg and poultry industries and presented an extended analysis of the way farmers could combat it by increasing the strength of their co-operatives. He pointed out that vertical and horizontal integration were needed—that the spread of vertical integration dictated that co-operatives would have, in the future, to get their members to agree to more control of production than they have in the past, when their work has been almost entirely that of horizontal integration or combining farmers for purchasing and/or marketing.

He specifically denied that increasing the scope of co-operatives under the system of voting by production or amount purchased, instead of on the basis of one vote to a member was weakening the co-operatives as organs of the family-farmer.

He stated that Poultry Producers of Central California has assisted only one very large grower, and this by feed loans, etc., only, and not by financing his hen houses, which are aimed at a 140,000-hen operation. He said that the aim of Poultry Producers of Central California was to allow its membership to increase from 3,000 hens, which is now too small, to an efficient 6-8,000 and not support giant enterprises which would compete with the bulk of his membership. He pointed out that all but one of his Board of Directors are small growers.

4. Combating Vertical Integration—By Promotion of Product

From Red Bluff, the President of the Cal-Can Co-operative

Just because you are a farm co-operative doesn't mean that you can run these plants and run all this through here without some outlet because we'd be in real serious trouble, more so than we are right now. I mean as independent growers. So we have always used the outlets and we continually push and prod our sales department to increase the sales because we have continual pressure from growers to put more product in. But the sales outlet is the—probably the key to the number of tons of product we are going to run in. That's the first one. And the second one, of course, is the processing facilities whether they can handle it and do a good job and then, of course, the pressure is on from the grower members to increase or build this up as they as we can do this.¹

At Fresno, the manager of the turkey board recited the history of turkey promotion. While promotion had more than doubled California consumption of turkeys since 1952 until the whole output of the industry was being sold within the State, its only provable effect on price had been saving the grower the 4 cents a pound freight to New York.

¹ Earl Blaser, Red Bluff Hearing, August 26, 1960

City. The industry was still in a bad state and would remain so as long as turkeys were sold below cost at the store.

A farmer from Buena Park, however, said that some of the industries which are engaged in integration are the most ardent advocates of the idea that all that is needed is more promotion and the most relentless opponents of any plan to control the supply of eggs, broilers and turkeys. It was pointed out that with all the promotion available for broilers and the great increase in sales that it has caused, here and abroad, the price to the producer has steadily declined. Promotion is needed to increase consumption, but you must have control of supply first and foremost.

MARKETING ORDERS

I. HOW THEY WORK

Deputy Director William J. Kuhrt of the State Department of Agriculture submitted the following

Legislative efforts to balance supplies of agricultural products with market demands are not new in California, in fact, we have had over 25 years of experience in this field. Some of our co-operatives tried out voluntary efforts as early as 1928, in such commodities as oranges, prunes and raisins. When these voluntary efforts could be successful only if operated under enabling legislation.

Our first state law became effective in 1933, and was called the Agricultural Prorate Act. It was administered by a Commission, separate from our State Department of Agriculture, and provided authority mostly for application of volume marketing quotas upon producers. A number of commodity programs were operated under this Act, but as enacted and as administered, this Act proved to be inequitable and unpopular with farmers and, even though amended later, has been used very little since.

In 1933, the Federal Agricultural Adjustment Act also became available to some of our commodity groups. This Act, later re-enacted as the Federal Marketing Agreement Act, carries authority for surplus control and for grade and size controls, and as will be observed later, is available for programs on a limited group of crops.

Other laws were passed in the early 30's but failed of constitutional tests. To meet a need for vigorous legislation which would pass the courts

a new act, called the California Marketing Act, became effective in September (1937). This act, administered by the State Department of Agriculture, carries authority for marketing programs which can: (a) balance supply with market demand by volume restrictions, or by quality and size restrictions, (b) improve quality through grade, size and maturity regulations, (c) increase demand through various types of promotions, (d) provide for needed research, and (e) provide for control of unfair practices. This is the act under which (33 of the 36) State programs now operate. Not all carry authority for volume restrictions, but a very large proportion carry authority for volume controls, or grade and size controls, or for promotion, or a combination of two or more of these methods.

Also, we now have 15 federal programs, under the Federal Marketing Agreement Act, operating in this State. Some operate alone, but many operate in conjunction with our State programs. These

federal programs mostly use volume controls and grade and size controls to balance supplies with market demands

In the application of controls upon quantity, the following types of regulations are authorized, in both the federal and state acts

- (1) Regulation of the quantities which may be shipped to market by periods
- (2) Establishment of marketable and surplus percentages, with the setting up of surplus or reserve pools to take care of the portion of the crop which is not permitted to be shipped in regular market channels
- (3) Limiting the period of time for the processing of a particular product in order to prevent overpack
- (4) Reducing the quantity that will be available for marketing through greendropping, such as is used with cling peaches in California

In the application of quality control regulations used primarily in balancing supply with market demand, such regulations may apply both to grade and to size. In using grade limitations, it is common to establish minimum standards of quality which may be marketed, or to limit the use of specific grades for certain purposes or utilizations. For example, with some products only Number One quality may be shipped to market, and the remainder must be diverted into by-product pools. In limiting the utilization outlets, for example, only the Number One grade may be used for a certain canning utilization, such as canned pear halves, whereas the Number Two grade may be used only for baby foods. In the application of size regulations restricting the marketing of either the small sizes or the sizes that are too large, those sizes which are not permitted to be marketed by reason of these limitations are diverted to by-product pools, and used for other purposes.

It will be noted that none of the above authorized types of controls relate to production controls, instead they are controls or limitations upon the quantities that may be marketed and do not directly limit the acreage which a producer may plant, or the quantity of the product which he may produce.

Thus, as one might expect, a great deal of experience has been gained in California in the application and administration of the various types of marketing controls designed to balance supply with market demands. We cannot claim that all of these programs have been completely successful, but it would be fair to say that, generally speaking, the results have been reasonably satisfactory, and improvements are being made constantly.

What had made the marketing orders necessary, Kuhrt said, were these things

- (1) Long before the depression began in the 1930's our farmers, engaged in producing many of our crops, began to realize that uncontrolled surpluses often reduced their prices below the costs of production, often much more drastically than the amount of oversupply would seem to warrant. This severe price demoralization resulted from the competition among farmers for a market for

their crop, and is aggravated by a lack of organization of farmers for price bargaining purposes. But even with a bargaining association, the price which can be expected must be one that reflects the supply-demand conditions, and an oversupply means lower prices.

(2) With some products in some seasons, demoralized prices were so low and caused such heavy losses to producers that their credit was impaired, and many were unable to continue in business. This has been the effect for many years, but in recent years the turkey and fryer situations in this State, as in many other producing states, are acute examples of what disasters surpluses can bring about.

(3) Consumers of these products do not benefit in lower prices anywhere near to the extent of the losses to farmers, and their purchases do not increase commensurately with lower prices so as to remove the surplus and restore reasonable prices to farmers. Produce handlers and retailers of farm products generally do not adjust their selling prices to fully reflect farm price conditions. Besides, many consumers are not very much interested in, or aware of, farm price levels. They will complain if there is a drastic price increase, and they may buy a little more if a large price cut is called to their attention. But in these days consumers are not too conscious of the farmers' supply-demand problems, and they cannot be relied upon to respond effectively to lower prices to help farmers to solve their supply-demand problems.

(4) We have found instead that under conditions of reasonable stability the wholesale and retail trade, being reasonably assured of their margins of profit, will move larger quantities of the product; while under chaotic price conditions the trade will limit their purchases in fear of buying at too high prices, and thus being unable to meet the competition of competitors who may have bought at cheaper prices.

(5) The need for reasonable stability in prices to farmers is especially important in California, and in other producing states where farmers must depend upon the prices and the returns they receive for their products to enable them to pay their production costs and their family living costs. Where production of crops and livestock is a commercial enterprise, as well as a way of life, prices must be sufficient, in the long run, to meet expenses. Our California farmers know that in order to survive they must do something effective to balance supply with market demand, and to avoid the heavy losses resulting from oversupply and price demoralization.

(6) In operating control programs over the years, our farmers have found some other facts and conditions which are important to success in balancing supply with market demand. Among these are

- (a) The area covered by the marketing program must include a major part of the supply of the product which will be available for market during the period of time in which the regulations will be effective. In other words, in order

to be completely successful, practically all of the product which will be competitive for the same market outlets must be under the same regulations. Thus, California farmers alone cannot solve the supply-demand problem for turkeys or fryers, or for potatoes or apples, or for many other farm products that are produced regionally or nationally. They know that federal legislation is required to bring stability for such products on a national level, to solve the problem effectively in California.

- (b) Secondly, our farmers have learned that the legislative standards of enabling legislation must be sound economically, as well as legally, so that the price level objectives will stabilize and prevent severe losses, but also will not tend to bring greater production and greater surpluses. Unrealistic price standards and objectives can create more surpluses, and thus aggravate problems already difficult.
- (c) The administrative agency, including the industry advisory board or committee and the departmental agency, must have available to them complete and accurate supply-demand-price information, in order to reach accurate and sound determinations.
- (d) We have learned too that some crops are easier to control than others, that crops which are planted annually, such as tomatoes and lettuce, are very sensitive to any price improvement, that farmers tend to shift from the production of unregulated crops to regulated crops, that is, if their production situation permits, and that some farmers, producing certain products wherein price trend changes have been more moderate and relatively slow have not experienced such heavy losses, and consequently do not feel the same degree of need as producers of many other products.

In the opinion of many experienced farmers and farm leaders, what is needed most at the present time is a Federal Enabling Act, applicable to practically all farm products produced in the United States, and under which marketing programs may be set up, along self-help lines, to stabilize and improve the marketing of these products. Such an act should contain authority for balancing supply with market demand both by production controls and by marketing controls. It should provide authority for grade, size and maturity regulations, both to control supply and to improve quality, authority for educational and promotion programs to make consumers aware of the nutritional values of farm products, and thus to stimulate demand, authority to carry on urgently needed research to find answers for certain problems of production, processing and distribution.

Based upon our experience, such an act should provide that each commodity group initiate its own program, producers should participate in drafting the provisions, the act should require majority approval of producers voting in a referendum before such a program would become effective, the act should provide that the cost of such programs will be borne by the industry itself, and should

not be a drain upon federal tax moneys, it should provide that such programs will be administered by an administrative committee nominated by industry and operating under the supervision and subject to the approval of the Secretary of Agriculture, and finally, provision should be made that if the program does not work out, or is no longer wanted or needed, it can be terminated quickly.

Such an act would provide our farm product groups throughout the country with an effective instrument under which they may organize themselves, if they need and wish to do so, to undertake a solution of their supply-demand and other marketing problems. If such an enabling act is made available to producers generally, the choice of whether or not to make use of its provisions will rest with each commodity production group, and if a particular commodity group decides against using the provisions of such an act, the responsibility for the decision will rest with them.

It is probable that the development and administration of programs under such an act will require some expansion in the United States Department of Agriculture to help the industry groups in getting organized, to carry out the necessary referenda, and to advise with and supervise each program made effective. These costs probably must be borne by the federal government. But practically all other costs of these programs, undoubtedly the larger portion of the costs, will be borne by assessments upon the industry people affected.

Who Will Oppose?

We can expect that such an act will be opposed by some handlers of farm products who have benefited for years by preventing farmers from becoming organized. It will be scoffed at by followers of the laissez-faire theory of economics who still think that the free market price is the best means of balancing supply with market demand, and these people probably will not change their minds unless they happen to invest some of their money in an unstable commodity production operation and learn the hard way. Lastly, there will be opposition from some farmers who are fearful of government controls as a principle, or who believe they were hurt by some previous efforts to attain stability.

But despite the objects and opposition, we cannot escape the fact that our present lack of planning and failure to develop reasonable balance between supply and demand for many of our farm products is often very wasteful of manpower, money and production materials. When surpluses develop there is often an actual loss of product which is unharvested, or at least not marketed in regular channels, the land and productive factors used in producing the unwanted product are largely wasted, there is a loss of the labor used in producing this product, there is the loss of operating capital by the producer, but worse still, if the financial loss is severe the farmer may lose his credit, and frequently his status as an independent producer. Then he is forced into the status of a hired hand, either in agriculture or in some other field.

What Could Be in Store?

If the disastrous situation that has already occurred in turkeys and fryers spreads to other commodity fields, we shall be faced with a major tragedy in our agriculture, since a high percentage of our total production will then be controlled by a relatively few operators. This could happen in quite a few commodity groups, if something is not done promptly to stabilize prices and improve income so that the farmer can pay his bills and maintain his status as an independent operator.

To those who openly advocate a greater and greater concentration of agricultural production into the hands of a few, solely to attain greater efficiency and lower costs, I suggest that they give earnest and thoughtful consideration to what such a development will cost in money and material losses, and the broken spirits and discouragements to thousands upon thousands of our independent, self-respecting farmers.

But even after such enabling legislation becomes available to farmers, we must not expect immediate relief from problems. It will take time for farmers to organize and to develop enough support, it will take time to draft provisions to solve difficult problems, it will take time to overcome industry objections and to obtain majority approval, it will take time for producers to gain experience in administering these programs, and while they are gaining experience we can expect that they will make some mistakes. And there will be many differences of opinion as to the best way to do a particular job. But regardless of the difficulties, the obstacles or the mistakes, such legislation is urgently needed by many farm groups in this country to stabilize their prices and improve their income. In the end such an act will go far toward stabilizing our agriculture, and in preventing chaotic prices which force our farmers out of business. With such legislation we can look forward to a greater degree of stability and economic democracy in our agriculture, something which farmers throughout the United States have hoped and prayed for, for many years.

Dr. James T. Ralph of the Department of Agriculture.

to alleviate the farmer's problem of weak bargaining power. First, we encourage co-operatives which enable farmers to share in the returns possible from handling or processing their own produce. Or the returns possible from supplying themselves with the factors of production.

Second, we encourage bargaining associations. A bargaining co-operative is especially appropriate for producers not in a position to form their own processing co-op. Through a bargaining association, farmers can bargain with private handlers for a price on their product. We are also encouraging the use of self-help marketing order programs. Marketing orders are an extension of a co-operative approach which enables producers to do for an entire industry that which they could not do through a voluntary co-op.

Under a marketing order, producers can conduct consumer education and trade promotion activities to increase the demand for their product. They may also conduct research programs to find

new uses, or they may carry on quality control activities to assure themselves that their product pleases the consumer. Wherever necessary, they may adopt quantity regulations to smooth out the flow to market or to limit a total quantity of the product which is marketed in the particular season.

In other words, Mr. Chairman, under a marketing order an industry may influence the point of intersection of supply and demand curves. In agriculture we often hear the term "supply and demand" and many people say that we should not finagle or fool with the law of supply and demand. It is true, Mr. Chairman, that the market price of a product is, for the most part, determined by the relationship between the supply of the product offered and the existing demand for it. Other industries have also accepted this economic law, but they have discovered that price may be influenced either by changing the supply or by changing the demand. In other industries a firm plans what amount of production it can market profitably and production is set at this level. Because agricultural people have not yet reached this stage of planning, they continue to have problems. Through a marketing order program, farmers are able to approach this type of market planning. By research, quality control or promotion they are able to effect a demand. By evening out the flow to market or by marketing produce they are able to effect the supply. In either case, the result is normally an improvement in price and brings agriculture closer to acting alike or similar to other private enterprise industries in America.¹

II. AID THROUGH MARKETING ORDERS

In Salinas, a large grower of lettuce, celery, tomatoes, onions, garlic, potatoes, small white beans, broccoli and other perishable crops, spoke on the summer head lettuce deal.

I don't believe that there is a single grower that got any part of his investment back on Spring lettuce (so) there was ballots taken throughout the 18 counties involved and this marketing order was accepted by one of the highest percentages in history.

Prior to the time the marketing order was invoked there was just barely enough return to pay for the cost of the carton that the lettuce went in and the staples to close it and the labor it cost to harvest it. There was nothing back for the growing, and the growing was a complete loss. Now, after the marketing order was invoked, first, I should point why the marketing order was invoked besides, outside of the fact to avoid these tremendous losses.

The main purpose was not to make any one rich. The main purpose was to help the grower recover his cost and, if possible a legitimate reasonable profit. And the way that that can be done and the way that that was done, was by leveling the shipments so that there wouldn't be gluts. The trade in the past has been fearful to purchase a commodity like lettuce when maybe for two or three days after a long period of depressed markets, they would come in

¹ Davis Hearing, May 2, 1960

timidly and buy, buy at very low prices, but even then, they were fighting shy because they knew that if the crop was in the valley . . . They knew that the demand came that there would be—shipments would increase. For that reason, it became a merry-go-round of distress. When the marketing act set up the first week or two it was strange to the people who were on the Advisory Board. It was a little difficult to get it into action and bring about the desired results immediately. But after two weeks of trial and error, the shipments were leveled out, and the market went from around 75-80-85 cents which is just barely packing cost. It moved up over \$1 and then it went to \$1.25 and \$1.50. Then it slipped back a little, and then it leveled itself out, and from about maybe the 10th of July on to the present time, the return to the grower—as far as the individual price of a carton is concerned—was enough to reimburse him for his growing cost and give him a reasonable profit.

Now, the marketing act cannot claim all the credit for this improvement, this summer and fall. Because in the month of late July, August, we had a reverse. Nature who had smiled so generously then frowned, and we had insects, and we had many defects that are inherent sometimes in the growing of perishable crops. At times, nature destroys the surplus, and after that we had something that had been unheard of in this valley. We had a rainstorm, it happened in other parts of California. It destroyed a tremendous part of the perishable crops. As a result of that rainstorm and the supply dropping so low that it couldn't begin to meet the demand, the market, the price ran away with itself which it does always in a perishable commodity when it's in exceptionally light supply.

After the rain . . . the market went out of sight . . . \$4 a carton for a short time. One day it was \$5 . . . (but this) did not offset . . . lost . . . production (in the case of some of the growers) ¹

There are 17 members on the advisory board which operates the marketing act, nine from the heavy-producing Salinas-Watsonville-King City-Soledad area, eight from other areas, with 11 the number necessary to invoke any regulation. There appeared to be unanimity on invoking regulations which included the elimination of Sunday loading, and shipments were cut back to as low as 70 percent of possible shipments from time to time as demand would indicate, but at least half the time 100 percent of shipments were allowed on the basis of a six-day week, holding back one day and "ballooning" the next.

The 85 percent of national production enjoyed by Salinas was an important factor in making the marketing act work, but the tremendous increase in productivity everywhere was making it necessary to urge other sections to develop marketing acts. One is in prospect for Arizona, which must also control production to make any spring deal (April-May) marketing order really effective.

Manager of the Brussels Sprout Marketing Program, spoke at Salinas

¹ Harry Crean, Salinas Hearing, October 16, 1959

Before our marketing program went into effect there was absolutely no stability in our industry. The frozen pack of brussels sprouts during the years 1952 through 1956 varied from 23 million to 44 million pounds. Growers had no idea as to what acreage to plant, processors did not know what was being packed. To add to this uncertain situation we had another complicating problem that sometimes arose when the weather was good throughout the harvest season. In those years, at the first of the season the price to growers might open at around 8 cents per pound, then it might decline to 7 cents. (I do not know of it advancing.)

The processor who went along as the season progressed would have his pack possibly complete by December 24th. Then there would be some sprouts left in the fields that were of just fair quality. Some other packers would move in and offer $3\frac{1}{2}$ to $4\frac{1}{2}$ cents per pound for them. As picking cost at that time was around 3 cents a pound, some growers would accept that low price. This would give the "tail-end" packer a lower raw product cost, and he would promptly disrupt the market with lower quotations. This pattern developed a lack of confidence in the market, and buyers were reluctant to place firm orders.

The season just prior to the first year's operation of our program there were all kinds of prices to growers in the field, ranging from $4\frac{1}{2}$ to 6 cents a pound (all below cost of production). The first year of operation of the program the established price to growers was $8\frac{1}{2}$ cents per pound. There was a level market and steady demand all season. In the 1959-60 season we understand the price to growers is 9 cents per pound.

The object of the Brussels Sprout Marketing Program is to provide a supply of frozen brussels sprouts that will meet the demand without creating a surplus, and to develop a constant steady market. To do this we obtain all the information possible on movement of stocks from storage, demand, and the condition of markets. When this data has been secured our committee arrives at a packed goal which appears to be about what will be sold during the following year. After our committee agrees on a goal, the Bureau of Markets calls a meeting of processors, where the goal is presented, and the processors are asked their opinion as to whether or not the amount he considers a proper production to take care of the market demand. Then another meeting of the program committee is held and the composite idea of the proper pack expressed by the processors is presented. Each member of the committee gives his figure as to the goal, the average is calculated and the goal is established. Press releases are sent out promptly so the trade will know what to expect. The first season the goal was set on June 24, 1958, at $32\frac{1}{2}$ million pounds. The season closed February 21, 1959, and the actual pack was 32,715,328 pounds, or 100.66 percent of the goal. The 1959-60 goal was established July 24, 1959, being 33 million pounds.

Under this program, the grower, his marketing agent, or co-operative association continues to negotiate with the processor as he has done in the past. There is no subsidy, price control, or control of

the acreage the grower may plant. There is control of the tonnage he can deliver to a processor for freezing.

Allotments are made to growers who have established a base on the number of acres they had grown in the 1957-58 season. A yield of four tons per acre was estimated in connection with the base period of 1957-58. When the goal is set for the frozen pack, this base of four tons per acre may be modified (to) 90 percent to 110 percent, depending on the tonnage to be processed. To make this modification in grower allotments, requires a vote of 9 of the 11 members of the committee. When the figure per acre has been authorized, a primary certificate is issued, which carries a fee that is used to take care of administration expense. Later in the year, a secondary certificate is issued to each grower, showing the number of tons he is entitled to deliver to processors for freezing. This also carries a fee which rounds out the budget for the season. In the 1959-60 season this also included funds for education and trade stimulation plans. All our funds for operations are collected through these fees. We have all our funds in by the time the season starts and we do not ask processors to collect for us. The secondary certificates may be given direct by growers to the processor to cover tonnage he sells and will deliver to a processor, or, he may assign the certificate to a marketing agent or co-operative association who markets his crop for him.

Any, and all processors freezing Brussels sprouts must have in his possession, certificates equal to the number of tons he is to receive for freezing, and the tonnage he receives from each grower or marketing agent, or co-operative association must not exceed the tonnage shown on such certificate.

In the 1958-59 season, 15 processors were freezing Brussels sprouts. Each of them made a weekly report to our office. This report shows the tons of sprouts received, deductions for grades, and the total amount packed during the week. From these figures we make up a summary, showing totals only, which does not reveal any individual operation. The summary also shows the percentage of the goal packed during the week, along with the total to date. Copies of this summary are mailed every Friday to each processor freezing Brussels sprouts, and the marketing agents and co-ops; in this way all parties interested know how things are progressing at all times.

From all we can gather, our marketing program has benefited both the grower and the processor. We feel this is the way it should be, as no industry can prosper unless all sections of it make progress. We are pleased to report that after our first year we have heard no adverse comment from processors, and we have had co-operation from all of them.

Growers feel the program has enabled them to operate in the black, instead of red ink, as many of them did in past years. The thinking of Brussels sprout growers is best shown by their vote when our marketing program came up for an extension in the spring of 1959. The vote was 100 percent in favor of continuance.

As stated before, this is a quality control program.¹

A Windsor poultry rancher spoke on marketing orders in the egg industry.

Marketing orders, I think are good. Whether or not it would prove feasible just to have one state to have a marketing order on eggs, I don't know. If it would, if we could have a national marketing order possibly that would help, but if we did have one in this state, there is a possibility that it would help us here too, because I heard a man talk the other day and he said in the Midwest they have to have 6 cents a dozen to ship eggs to California. I mean if we could raise our prices up to a decent price they would still have to take a loss of 6 cents if they shipped from the Midwest to here and that's quite a break. So that is definitely something to think about and we know that we have to do something. I think that the farmers are getting desperate and realize that we have to do something and at the present time we have lost control of our business through the integration, the loans, and too many farmers can't speak for themselves anymore because the people who have loaned the money speak for them.²

From a one-time successful poultryman who found it necessary to go to work in town on a salary basis who declared:

Production controls must be put in to allow profitable egg prices to the farmers and save those independent operations from being forced to follow me out of the business.³

A small commercial poultryman testified at the Riverside hearing.

A nationwide self-help marketing plan. . . The program would be administered and its expenses paid by the poultrymen themselves. They would have to give a two-thirds vote of approval to any proposed marketing order before that order could go into effect. It is anticipated that one of the provisions of such an order would be production controls which would enable poultrymen—just as automobile and steel manufacturers do—to keep their output in line with demand and prevent disastrous depressions or outrageous price increases.⁴

In the Avocado Industry

A Fallbrook avocado rancher submitted the problems in the avocado industry and marketing order success.

It is, to a certain extent, a lot of it is tied up in hobby industry and there is a point probably that your committee could give us some advice on at the present time in this working of a market order. We are dealing with the Bureau of Markets, and we do have listed, according to their figures, 9,500 avocado growers. I could take the top 500 out of that I could produce at least 80 percent of the volume, but there is 9,500 listed on our list and there is at least one figure given of 1,300 that produce less than 300 pounds of fruit during the past year. They are listed as producers and

¹ Albert L. Perry, Salinas Hearing, October 16, 1959.

² Henry Burke, Petaluma Hearing, November 21, 1959.

³ Charles M. Christy, San Diego Hearing, December 2, 1959.

⁴ Bill Barger, Riverside Hearing, November 27, 1959.

we have, as you know, under the market act have to get an assent vote from 51 percent of the total 9,500 and people with a box or two of fruit that is sold in the market place aren't in the least interested in even looking at a several page market order, let alone voting on it, and it's one of the problems we have run into. And it has bogged down actually it's bogged down the Department of Agriculture, Bureau of Markets statistical work. They haven't given us the figures in the last in seven weeks now that this has been out for vote they were promised to us three or four weeks ago.

And I know the Bureau of Markets find themselves in this particular predicament because they wouldn't set a limit of what they would call a producer before the market order went into effect, but now they are in the position of establishing some, maybe a small limit if they were underneath they wouldn't call them a producer, but as long as they are on the books they are going to have to get them off by some signature that they are willing to come off. . . and that is a problem.

. . . It's entirely (caused) by the too small producer. Actually, I know one particular area and I know there is at least 800 growers in that particular area that are just 50-foot down lots with an avocado tree in their backyard which they sold fruit off of, and they are producers under the state law.¹

Production Control

With going along with production controls, "Our avocado industry is in a position that it's a limited industry, we are here in California . . . only 80 or 90 percent of the total of the U. S. production is in a very close area . . . San Diego County produces 60 percent of the state crop. I would imagine it's close to 50 percent of the U. S. avocado crop and I think we, as growers, should be in a position, by some means of this type . . . not control . . . it's an assist by state government allowing us to do things to help ourselves. And it isn't a cost problem to the State because as I understand these market acts provide that all these costs that we incur are paid out of the program and we are willing to assume that cost as an industry and 'paddle our own canoe,' I believe."¹

Apricots and Prunes

R. V. Garrod, representing the California Farmers, Inc., the Cupertino-Saratoga Prune and Apricot Growers Association, Garrod Farms, and as a director of the Campbell Co-operative Dehydrater, stated that the problems growers in the Santa Clara County are faced with are . . . water, labor, taxes, roads, flood control, urbanization, schools and markets.

With reference to marketing the states:

Marketing on Garrod Farms is no problem. We ship some early apricots to the fresh market, our canning apricots we contract to Cal-Can on a co-operative basis, our dried apricots and prunes, the latter are dried at the Campbell Co-operative Dehydrater,

¹ Walter Beck, San Diego Hearing, December 2, 1959

and both are marketed for us by SunSweet We always receive better than average returns.

Strawberries—Berries

General Manager of the Central California Berry Growers Association—the oldest and largest strawberry marketing co-operative in the United States—mentioned the association has close to 200 grower members who operate and control approximately 1,000 acres of strawberries, 200 acres of raspberries and 200 acres of other bushberries

Our growers' service and marketing association was organized in 1917 to help stabilize the marketing of berries produced in California's central coastal areas We have thus been established for over 42 years We are just as old as the SunSweet, Diamond Walnut and Sunkist growers co-operative

The grower members of our association have found, over the years, that by banding together for the purpose of handling their own marketing they can:

- (1) Offer to the public better berries because of ability to control quality;
- (2) Better control distribution;
- (3) Realize higher returns and profits through control of quality distribution by handling their own marketing

. . . In addition, strawberries are subject to a state marketing order which covers promotion, advertising and research of California fruit The order went into effect July 7, 1955, and has been in operation ever since Growers pay $\frac{1}{2}$ ¢ per crate on fresh shipments with shippers, including our co-operative, paying $\frac{1}{2}$ ¢ per crate. For frozen berries, growers pay $\frac{1}{2}$ ¢ per each 14-lbs. (equivalent to a crate, fresh). Shippers also pay $\frac{1}{2}$ ¢ on the same basis. Because strawberries are competitive with other fresh and frozen fruits, we consider these marketing services important in keeping consumption patterns in our favor .¹

A poultryman and integrator from Sonoma County stated:

Personally, I am of the school of the rugged individualist and free enterprise, but when it reaches the point that the individual cannot do a job efficiently, then it would seem to me that somebody with more power and more enforcement such as our government should come in and help us in getting the things done Now this Miller bill, is a bill which is still the power to the producer to determine what is to be done with him with the help of the government Now this to me is a step in the right direction.

. . . I'm saying the decisions to do as you want in your own particular enterprise should be in the hands of the individual, now not dictated to us by a government. I am not referring to price controls that we had to have during the war or labor control we had during the war I am referring to a situation where as long as we can make decisions which would be beneficial to ourselves and our community and our industry that we should be able to do this But it has reached the point now where the so-called law of supply and demand isn't holding true to what bas-

¹ Tad Tomita, San Jose Hearing, October 15, 1959

ically free enterprise looks to as a means of dictating if they are successful or not. As long as we have lost the true thing called the law of supply and demand, and as long as we have lost the ability to get things done as a group, then government has to step in and help us in this respect.

This is, basically, what the Miller bill is doing. It still gives us, as farmers or modified integrators, if you want to call us, a chance to make decisions of our own, but in this way we have a body who, in turn, is going to help us do these things through a marketing order.²

A poultryman from Vista, spoke in favor of controls to save the independent operator.

... production controls must be put in to allow profitable egg prices to the farmers and save those independent family operators from being forced to follow me out of the business.³

Self-help Program

Mrs. Eva Weiner, poultry producer from Vista, spoke and submitted a written statement of the egg producers in Southern California.

It is no wonder that more and more producers are supporting the proposed national self-help program as outlined in the Miller-Sisk-Hagen-Saund Bills in Congress. I must express my appreciation to both the board and Department of Agriculture for their efforts to bring clarity and understanding to the poultry producers on marketing orders in general, and the National Poultry Stabilization Act in particular. Many attempts have been made to confuse and distort the federal bill, and our State Department of Agriculture is owed a debt of gratitude for their efforts to bring clarity out of confusion.

A disorganized producer does not have any influence on the market. The result is a processor-controlled market. And, unfortunately, in Southern California many of the processors are either chain-store-owned or -dominated. The result is obvious. Individuals who see the problem of our industry and attempt to offer a solution can very easily become victims simply by a processor refusing to buy his commodity. Excuses are very easy to come by. A processor simply states that a given producer has a poor quality egg, or has too many of any one size and therefore he cannot use the eggs. Further, with the confusion created by operating on a dual standard, federal and state for quality, these allegations become even easier. As we understand, the producer is afforded no protection under the law from such injustices, if they do occur. If a given processor tells a certain producer that his eggs are of too low a quality, we do not have a neutral party to whom the producer can turn for verification.

Today, however, the producer is unequal to the giants he deals with and needs some protection.

May I offer your committee the suggestion that our Agricultural Code could well stand some modernization designed to afford the

² Bill Sovel, Petaluma Hearing, November 23, 1959

³ Charles M. Christy, San Diego Hearing, December 2, 1959

producer some protection and some apparatus for a qualified and authoritative neutral party to ascertain the facts when a question of grade and quality arises. We trust that you will recognize that without this protection and security, many producers are afraid to speak their minds for fear they will, in the vernacular, "lose their dealer." Any situation attended by fear is an unhealthy situation—and this is certainly an apt description of the poultry industry today.

I urge that you do all in your power to help secure the passage of the National Poultry Stabilization Act. Since the problem is national, and the solution will therefore have to be national, it behooves California, the leading egg-producing state in the nation, to take the lead in the attempt to stabilize the industry.

Chairman of the California Farm Research and Legislative Committee presented a written statement on self-help programs in California:

Details of the type of self-help programs in operation for California producers at both state and national levels are a matter of historical record since State Agricultural Agreement Marketing Act went into effect in 1937.

Yet, regardless of the tailoring of these agreements to the special commodities where producers have invoked them, use of promotion programs which have been very effective and which the industry itself has financed, stabilization pools, diversion of temporary surpluses and even volume control, surpluses arising from uncontrolled non-farmer-financed vertical integration have and continue to cause acute distress.

Because so many California farm commodities are grown for national and export markets, we have the double problem of having to resort to both state and federal agencies for assistance.

At the state level, California has pioneered with many varieties of marketing agreements. Yet, constantly changing production and marketing patterns require continued evaluation looking toward improving the act.

In Wisconsin, as a result of testimony of William J. Kuhrt, Assistant Director of Agriculture, at the poultry distress hearings before the house subcommittee June 18, 1959, the state legislature has before it a marketing act much of which is directly copied from the California act.

However, a number of the provisions being considered by the Wisconsin State Legislature have gone beyond those in California and might be found useful in resolving some of the problems of our farmers here.

Among them are

1. Equalization of payments to remove inequities or hardship resulting from the operation of marketing orders;
2. Price posting, whereby growers agree that such individual will not sell below the minimum price he has set on his own product until after giving notice;
3. Production adjustment benefits to equalize the cost of disease control, quantity adjustment or other programs with industrywide benefits.

Even where producers have strong bargaining associations and/or co-operative, as in canning peaches, plus a volume control order which provides for reducing a heavy crop by green drop and cannery diversion, and even where California tonnage represents more than half of national volume, the processor price often falls below operating costs for too many growers.

Hence, the above proposals are well worth considering in a general overhaul of the California act.¹

III. OPPOSITION AND TECHNICAL CRITICISM TO MARKETING ORDERS

A representative of the San Diego Co-operative Poultry Association, said that whether things are good or bad is

. . . only a relative situation . . . what I am afraid of and always afraid of is that we will become emotionally disturbed here in these situations and somebody will do something right quick and I never traded horses in a hurry in my life that I didn't get stung.

If you want to solve this poultry business then you shut off production credit in the Farmers Home Administration. You see, the lower down you go the more money you can borrow. All you got to do is to prove you are destitute and nobody else will loan it to you, and you can go to the government and get it.

We fellows that are producing at costs that we feel are going to take care of us . . . don't you fellows come in and pay some guy who can't meet that standard. Give him the money somewhere else. Put him up a home down on the beach where he'd really be comfortable.²

With reference to an earlier statement by a committee member regarding the advantages of marketing orders,

I think we have to be more specific on that and before I'll buy that, somebody's got to show me where the advantages are; you will find in my prepared statement that I question that because the general history of marketing orders is that their relief is temporary and you can say by temporary, one, two, three or four years, but no ultimate good comes . . . and you don't have to look at the turkey marketing order very long to find that that thing is true and I think that today turkey men would vote that thing out if employees of the marketing order would allow them to. Because they think they can use that two cents that they are paying on every bird to a better advantage to themselves.

but we know in San Diego County a great many turkey men and the fellows we have talked to . . . of course, maybe we don't run with the right crowd, but they seem to be very discouraged with the situation because their turkey prices have continually dropped during the life of the marketing order. Production has gone up and prices have gone down and so that is the thing that comes into it. And then going along on this . . . some of the specific help, of course, we always have the thing of costs. At the present time I think our worst enemy is the fixed price on

¹ Joe C. Lewis, Bakersfield Hearing, September 30, 1959.

² Hart Dunham, San Diego Hearing, December 2, 1959.

grains that forces us to pay that price for our feed. In other words, the subsidy that is guaranteed to the fellows that produce the feed grains plus the wheat and corn and that brings all the feed grains up to their level why then that's why when you asked this morning if somebody would be in favor of seeing supports knocked out I'd like to see it tried because what you do you would hurt a lot of people quick and you hurt us all together then we could all cry on each other's shoulder and then we would all get well together. So that's . . . to me . . . of course, that's in the area of the federal government, but I hope Mr. Benson can shake that program through and do something about it.²

From a Ramona poultryman:

I wouldn't say that 3,000 hens would entirely support me at this time. I have some beef stock that I run in conjunction, but my statement is there have been many proposals on what might be done for or with the poultry industry such as the food stamp plan, marketing agreements, direct payments, hen purchases to remove surpluses, and production controls. However, I do not desire any governmental controls in poultry. My faith in the poultry industry is based on free enterprise that is actually free. Government intervention can only dislocate the law of supply and demand and also will increase the tax burden on an overburdened public. That's my statement.³

A poultryman in San Diego County since 1935, stated

I think the growth in the poultry business has been due to extra large profits, off and on over the last 10 years. And a lot of poultrymen rather than putting those profits into income taxes used that money to grow. They put up new buildings and have increased their flock and I am sure that has a lot to do with it. Speaking of growth, you had a witness that said he had grown since 1950, from 250 hens to 20,000 hens. Well, he isn't a poor poultryman, he is a wealthy man. It costs about \$2 to produce a hen until she is ready to lay. Two times 20,000 hens is \$40,000. Your agricultural college or farm advisor would say the investment average investment to keep a hen on a place for land, water pipes and buildings, electric wires, is probably \$5. Five times 20 is a \$100,000, that is \$140,000 and I can't understand why that man would complain or ask for supports.

I just want to go on record that I think that if you want to help the poultrymen just leave them alone. Let's don't have any marketing orders or any kind of regulations at all. And by the way, we voted down a marketing order in the State of California last year. I can't see why they keep bringing it up again.⁴

A farmer and cattleman from Buellton stated at the Santa Barbara meeting

I personally don't think that too many controls is too good. I know that if you don't control this production you are going to

² Ralph A. Wagner, San Diego Hearing, December 2, 1959

³ Hart Dunham, San Diego Hearing, December 2, 1959

⁴ Earl Fuller, San Diego Hearing, December 2, 1959

have a definite price, but we in agriculture are, of course, freedom-loving people and when they start telling us how many acres we can plant of this and how many acres we can harvest of that, why we get a little bit perturbed. Now, on the other hand, of course, we understand that there has to be some way of controlling it. Now if we could do that ourselves we would be very happy, but I don't know whether we can or not.²

Price Control

A rancher from El Cajon

We do not know yet how to regulate our agricultural production and markets produce for a market. We have had too much, shall I say government interference since 1929, which has put us in the field of producing for government. Unfortunately, our subsidy programs have gotten into the realm of politics where it isn't political for the corn growers, for instance, to produce for a market. And when you talk about corn, you are talking primarily about feed grain. It's politically important for programs to be established which allows corn to be produced for government purchase at a fixed price fixed figure which is profitable to most of the corn growers in the thing . . . in the area.

We have to look at another factor here involved in this, and Mr. Geddes, I hate to take so much time, but this is an involved question.

Industry has improved its efficiency somewhere around 25 percent over the last 20 years. Agriculture has improved its efficiency 83 percent, and we are just in a position today, through new techniques of production, added uses of fertilizers, knowing how to vaccinate chickens—better to save more of their lives, etc., but we are now in a position to produce more efficiently than we have ever been and, unfortunately, the stomach is only a certain size. And you can only sell so much of it for foodstuff. Unfortunately, we have gotten into a program where prices have been supported at a point which is profitable. As a consequence we go on trying to control, but we don't. Congress doesn't have the intestinal fortitude to write control programs where they will control, and even if they were written. I heard a man in the Department of Agriculture say, we wouldn't be able to carry them out unless we were ready to stand up and be shot by the farmer . . . so this is the kind of a problem that we have confronting us. We need to approach this thing, in my humble opinion, from the standpoint of supporting prices on a percentage of a market place . . . of the market price and the market place. This is the only way we are ever going to accomplish control in this area. And then just let everybody go on and produce and if the market price falls down here and we support them at 50 percent of the market place price, it'll stop an awful lot of this overproduction in a hurry.

This will establish return in the market place and this is the only place where you can get it through return.

² William Larenjo, Santa Barbara Meeting, October 26, 1959

This wouldn't be a control. Only insofar as price is the control and, actually, when you come right down to it, nothing will ever control production except price.

It is not a production control. It is a price control.

I have discussed this with many cotton growers in your area (Bakersfield) and others, and the California cotton grower is convinced that he would have the cream of the market if we were out from underneath of all supports and controls.

I would say that the majority do that this is the feeling of the majority. The only reason that the cotton growers don't go in that direction is because of the political expediency of having to negotiate with the South for a workable cotton program in California.

Well, let's look at the total picture. Actually, from the total picture, what do we have about 28 percent of the total agricultural production of America under support prices and controls, the balance of our agricultural economy is operating in a free market price economy. All of the livestock products with the exception of milk and lamb—not lamb but wool, about 72 or 73 percent of the total production of the nation is now operating in a free economy and has always operated there.

We have always had problems whenever we have surpluses, but they adjust themselves rather rapidly and, in my opinion, they will continue to do so provided they are free to adjust themselves from market price conditions. If they are hamstrung they won't do it. I've been in this since 1938, and I've seen many adjustments and I've seen some pretty rugged times in the industry before. Now we will not lose money this year. I mean we will not be in red ink. Now we won't support our family, should I say, the point that they have become accustomed to live with our earnings this year, but we won't be in red ink this year in our operation. The adjustment is just ahead.¹

A hatcheryman from Sonoma County.

I'm certain the law of supply and demand as it applies to the poultry industry today is certainly not in the same position that it was 20 years ago. I'd say today, products are produced regardless of what the consumption might be within the various patterns in the industry.

I feel, one way or another this industry will be controlled. Whether it is by government intervention or whether it will be, say 10 years hence, in the hands of the few large corporations or individuals, sooner or later production must be tailored to consumption. In every other industry it has and so it will in this industry. But how this will be achieved is open to argument.²

A very efficient poultryman and retired accountant from Forestville spoke on the free enterprise system.

I have long advocated the free enterprise system. I would like to keep government at arm's length, it does—I do not relish any

¹ Warren Hooper, San Diego Hearing, December 2, 1959.

² Herbert Bundeson, Petaluma Hearing, November 23, 1959.

type of control because I feel it limits my personal field of decisions. I realize that the situation has reached the point now where such a thing might be desirable. That, too, is something which I am still thinking about. I've not quite made up my mind on. In the meantime, I have had to live and in order to do that I have had to become flexible in my operations—change it to a point at which I could survive under present conditions.¹

Just a Little Profit

A poultryman from Lakeside

It covers a big field—control does—and we've got to have some kind of restrictions in one form or another. There's no two ways about it. Like this cholesterol thing come up—we gotta have an attack for it—and nobody did attack it. People got away from it. . . . just like eating poison. They didn't want no part of it. Heavier-set people probably do have a little heart trouble in one way or another and they are gonna . . . what we are after to sell more eggs, that's one thing that's going to help just a little bit, because producing 10 times more eggs today . . . next year than we are today ain't gonna help either.²

A member of the committee posed the question the poultry industry organizing an effort in behalf of a marketing order,

No, it just seems that certain parties just don't want it in this area. They want . . . free enterprise, but what have we got for this free enterprise. Now just what have we got. We are under controls so bad that's just pitiful. One man quotes our price.

Now we know how much it's gonna cost to make a dozen of eggs and all we are asking is just a little bit of profit. All we want is a little profit. We don't want the 60 or 70-cent eggs and we know we are not gonna get it. It's gone . . . it isn't here no more, but we would like to make a profit just a little bit. I fully agree with myself as to the truth when I say I am speaking for a lot of people. All we want is a little profit. This can't go on for months and months borrowing money and borrowing money to keep you going . . . it isn't right. It just isn't good business of any sort. As big as the poultry business is they gotta have some authority to just give us a little profit. We gotta pay our taxes and we'd like to know, well in November how much money come in . . . working . . . bank on it a little bit. Everybody isn't gonna make it in the business because with a \$1 a dozen someone is going to fall. They are just not good operators. But at least the general opinion of all the people that is in the poultry business we can't survive . . . it will run by State, no doubt because the differential in operation cost.²

Market Education

We need emphasis by the Agricultural Extension Service on market education and less on how to produce more eggs with fewer chickens. Now we are all doing a pretty good job of that, but there are very few of us who understand the marketing problems of the

¹ M. L. Melville, Petaluma Hearing, November 23, 1959.

² Florian Brzezinsky, San Diego Hearing, December 2, 1959.

products which we produce. And then last, and I only want to touch on this—we need more effort on the part of our Legislature to develop efficiencies in state government and control expenditures. These are very, very serious problems to not only the poultry farmer, but to agriculture as a whole. I think those are about the points that I want to cover.²

Expert Opinion

Dr. Sidney Hoos, Professor of Agriculture, Economist in the Agricultural Experiment Station and in the Giannini Foundation of Agriculture, University of California

I shall consider the area of programs referred to as marketing orders and agreements

Agricultural marketing programs of the agreement and/or order type may be operated on the federal legislation or under the authority of California enabling legislation.

The main purpose of these agricultural marketing programs is to increase producers' net returns. To achieve this objective they may use, under California legislation, some or all of certain provisions specified in the program authorization. Regulation of volume, quality, size, grade, pack or containers, advertising and sales promotion, research and investigation and prohibition of unfair trade practices. I shall say a few words about each one of these gimmicks.

First, volume control. The provisions for controlling the flow of shipments to the market has attracted wide attention. Under certain conditions, limiting the total shipments to market during the season may, but doesn't have to, it may increase farm price and income—at least in the short run. An important condition concerns the proportion of total load to market covered by the marketing order. For such a program, to raise prices effectively, the marketing order should cover all—or a sufficient amount—of the product being harvested and marketed during the controlled period.

Marketing orders were not devised to provide for control of production, and continued restriction of volume marketed, if it does result in higher returns to producers, may lead, over time, to an expansion in total production. In the long run, this in turn is apt to defeat the effort to raise producers' total returns. Marketing orders are sometimes used to lessen the swings in shipments and prices within the marketing season, without limiting the total amount marketed. It may be noted that with in-season control of marketing volume, if managed appropriately, can benefit producers and shippers without adversely affecting the interests of consumers.

Quality control. This provision includes regulation of grade, size, maturity and similar characteristics, as well as the provisions for inspection to enforce such regulations. Such regulations are generally thought of as physically or noneconomic, but actually they are carried on for economic reasons that have economic effect.

Promotion, etc. This provision which includes advertising, trade, consumer education and point of sale display is the most frequently used provision in California marketing orders.

² Warren Hooper, San Diego Hearing, December 2, 1959

The intent of advertising, and other promotional measures in marketing programs, is to supplement private advertising rather than to replace it. The objective of promotional programs is to increase the demand for the product concerned. If such programs are effective then each participant gains from the program in proportion to the volume he markets. But it is very difficult, at least for me, to evaluate the effectiveness of advertising and promotional programs.

Many growers and handlers believe that their marketing problems can be solved by advertising and promotion. But if the basic problem in an industry is overproduction or cost of price competition with other products, sales and promotion programs by themselves do not offer a complete solution. If there is a chronic surplus a sales promotion program is not the solution.

Research almost as many California marketing orders carry provisions for research as for promotion. But research facilities account for only a minor percentage of the total funds expended. This largely because much of the research is done at the state universities.

Unfair trade practices. This provision is designed to correct or prevent unfair practices in the processing, distribution or handling of agricultural products. Experience indicates, however, that the phrase "unfair trade practices" is ambiguous. What seems fair to one person need not seem so to another. Yet, there are certain types of activities that might well deserve prohibitions or appropriate provisions of marketing orders.

The currently available so-called "unfair trade practices" provision which is based upon our state legislation, in my judgment, needs rethinking and development so that a more workable and meaningful alternative method is available. In less fancy words, I don't think our unfair trade practices legislation underpinnings really does much good.

Now a few generalizations. There are not any fixed rules for formulating and operating marketing programs. Each one must be thought through in the light of the particular situation and problems of the industry concerned.

In deciding on the provisions of the marketing order, the probable effect on net return over a period of several years should be considered. Too often marketing programs are judged by their effect on one year's price. In operating any marketing program attention must also be given to competitive effects on other products, and to market entry possibilities from other areas.

Marketing orders by themselves are only devices and tools. They do not automatically bring solutions to marketing problems. As with other tools the effectiveness of the marketing orders depends upon the skill and judgment of the operators and the nature of the problems involved.

With a quarter of a century's experience behind them, California farmers and handlers should be in a position to view agricultural marketing orders in proper balance and with realization of their limitations as well as their potentials.

Volume control provisions of marketing order programs were originally designed and intended to affect the flow to market and not directly to affect the volume produced or the entry of individuals into production. Yet, some views prevail that marketing orders may, or even should be used to influence production or the opportunity to produce. Such a view, however, is not consistent with the traditional or established view, and there even may be legal and legislative aspects involved. This is an area, in my judgment, which merits observation and clarification.

Now what is the outlook for these types of programs? They can well be judged as an established set of tools which aid in the necessary adjustment to changing market conditions. Used with restraint and not expecting too much from them, they have a valid role to play and can contribute to the operation of the marketing system. Viewed in such a light, their outlook is for continued use and moderate expansion.

But if burdened with the objective of achieving results for which they are not designed or appropriate as direct control of production and production opportunities, or the painless and quick solution of product surplus and necessary production adjustments, if burdened with these types of job, in my judgment, our marketing order program institution may well disintegrate.

IV. NATIONAL PROGRAM—EGG INDUSTRY

Dr. Carpenter of the Extension Service analyzed the proposed national marketing order for eggs and drew some general as well as specific conclusions from it.

How Would Production Control Work in the Egg Industry?

After careful analysis, it appears that it would be much easier to influence the price for eggs or broilers by controlling production at the source than by trying to control or regulate the distribution of these products through the traditional marketing program. A program which would be effective in reducing supply should not be an insurmountable problem.

Nearly all chicks, whether of egg or meat strains, are produced in commercial hatcheries. The number of such hatcheries has declined sharply in recent years, as we all know. It would be a relatively simple matter to set up a national quota and then distribute this quota among states, among hatcheries in the states, and finally among producers in each state. Provision, of course, would have to be made to prevent black market operations in chicks. Hatcheries of all sizes could be registered and operated only on the basis of quotas received from producers or from the administrative board.

If egg production were controlled by regulating the number of layers, greater emphasis, of course, might be placed by producers on improving egg production per hen. This factor would create problems in effective control of production, but such problems are probably no greater, and may even be less, than those encountered in establishing production controls for grains.

Many problems would be encountered in working out a production control program acceptable to all producing areas. While some poultrymen favor controls, others prefer that competitive forces continue to control the economic destiny of the industry. The fact that poultry producers are scattered over a wide geographic area and have different costs of production and marketing creates many difficulties in reaching agreement on any program which would satisfy all producers in all areas.

Generally, it appears that producers in areas with lower production costs favor the continuation of the free competitive industry, while those at a relative disadvantage favor the establishment of programs which would give them protection against such competitive forces. The allocation of quotas among regions and among producers within regions would present many problems. For example, would all areas have to take the same percentage increase or decrease in production, or would differences in relative rates of growth over the past decade be considered? How would California be affected in this regard?

Poultry producers in areas that have a competitive advantage in production will, under free enterprise, expect to expand at the expense of other areas or at a more rapid rate than other areas. They are not likely to look with favor upon controls that would freeze production patterns so they cannot capitalize on their natural competitive advantage. Certain poultrymen apparently feel that some federal programs might be devised which would improve their competitive position relative to other production areas. However, a federal marketing order or production control program that encompasses the entire nation (regardless of its effectiveness in controlling supply or raising prices) would not eliminate the relative cost advantage which some production areas now have over others.

Eggs will tend to seek a uniform price level within the entire country unless trade barriers are established to prevent inter-regional flows. If Region A, for example, now has a production cost advantage of 2 cents per dozen over Region B, this advantage will continue after the marketing order is in effect. Furthermore, any price which will yield satisfactory profits in Region B will be even more profitable in Region A. Under such conditions the price satisfactory to producers in Region B will create pressure for expansion of production in Region A. Furthermore, producers in Region A may not want production cut back enough to raise prices as high as producers in Area B would like. These are some of the ticklish problems that would face administrators of such a program.

The imposition of production controls will create problems for both producers who would like to expand the size of their enterprise and new producers who may want to enter the industry. Unless some means is established whereby the size of individual units can be expanded, production controls may stifle technological development in the poultry industry. Many technological developments which reduce costs require larger outputs per farm to cover added costs. Many people will say this is the trouble with

our industry today. We have increased size of units too much and have overstimulated production.

If marketing quotas were used, these could perhaps be made saleable. Then new producers who want to enter production or established producers who want to expand might be able to buy quotas. Over time, production quotas might become the property of fewer and fewer growers, as has been the case with forest grazing permits and market milk contracts.

To what extent will a reduction in supply influence prices for eggs enough to increase net income? Until this question is answered accurately, we do not know whether reduction in supply would be practical or desirable. Researchers have found that the price elasticity of demand for eggs is low; that is, a 10 percent decrease in supply will result in about 33 percent increase in price *if other things remain constant*. This means that the price elasticity of demand for eggs is probably about 3 at the farm. Judging from experience last year, we may need additional research to find a more accurate answer.

Assuming that we could operate marketing control or production control programs effectively enough to raise prices, we would still have to determine our price objectives and policies to guide the industry. What would they be? Here are some of the principles which are important as a guide to price policy and the program.

1. Egg prices should be high enough to make it worth while for producers to stay in the market and continue to produce a high-quality product.

2. Price should not be so high as to bring about an undue increase in production for a period of years by those producers who regularly supply the market.

3. It should not be so high as to encourage new producers from the outside to enter the market and furnish products materially beyond market needs.

4. Price should not be so high that retail prices will be increased to a point where consumption is unduly discouraged and the commodity priced out of the market.

5. It should have reasonable steadiness from month to month and from year to year if possible. However, this may not necessarily give the greatest return, since advantage can often be obtained through seasonal price changes.

6. It should be about high enough to give the same income as alternative uses of resources, to prevent violent shifts in production patterns.

These points, of course, emphasize the ideal price policy; but we must realize that these objectives are difficult, if not impossible, to achieve.

We must realize that the production control program that successfully raises egg prices in the short run may in the long run generate serious problems. The inelastic demand that may be evident for eggs in the short run may not continue in the long run, particularly if egg prices are raised relative to other competing

products. Over time, consumers can change consumption habits. Even with relatively stable prices of the last decade, the per capita consumption of eggs declined from an all-time high of 400 per person in 1945 to 347 in 1959. The forecast for 1960 is 325. If prices were increased substantially and for an extended period, this downward trend in consumption might be accelerated. These longer-run aspects of production controls and higher prices cannot be predicted accurately. However, the direction of the impact can be predicted and should be given serious consideration in shaping any programs that might be proposed.

Conclusion

Past programs have shown that if producers wish to solve economic problems by legislative means, such as through production control programs or marketing orders, they must be willing to accept controls that really work. They must also accept the arbitrary rationing of production and volume flowing to market that usually accompanies such controls. They must also realize that there will be both benefits and burdens to bear, and that it will be difficult for administrators to distribute these equitably throughout the industry.

The effectiveness of such programs will depend greatly on the skill and judgment of the program formulation committees, the specific provisions they come up with and how closely they fit the problems of the industry. The entire industry must give wholehearted support to the program, whatever its provisions finally turn out to be, or it will be very difficult to accomplish its stated objectives.

V. PRICE SUPPORTS

From a statement by E. W. Brann, Chief, Bureau of Markets, California Department of Agriculture

Background

At the November meeting of the State Board of Agriculture, I touched briefly upon the history of price supports and pointed out that treasury supports anchored to purchasing power parity formulas and accompanied in some instances by acreage controls were not fully effective because of our great ability to produce in the light of technical progress. It would seem that more progress might be made by tailored regulations for each agricultural industry along the lines followed under marketing order programs.

Today I wish to carry the discussion a step further, namely the need for production controls based upon the foundation of quantities for market rather than upon acreage limitations.

As in the case of the previous meeting, the views here given are my own and do not necessarily reflect the views of the State Director of Agriculture.

Benefits of Efficiency Not Retained by Agriculture

Economic benefits arising to society from our efficiency in agricultural production are being so dispersed that relatively few are accruing to agricultural producers. The economic benefits are being

passed on to the distributive trade and consumers in the form of relatively low prices. Technological progress and production efficiency has brought into being a volume of production so abundant that unit prices have gone to such low levels that net income continues to be a real jeopardy

Low Prices Not Effective in Bringing About Production Adjustments

Theoretically, if prices are too low in relation to production costs, adjustments are automatically made to bring about a better balance. This is only partially true in the current structure of our agricultural economy. Low prices are not effective in bringing about needed adjustments because very strong institutional and economic forces are at work to keep agricultural production at a very high level. These forces are.

- 1 High capital investments promote high production in an effort to reduce per unit costs.
- 2 Capital investments in agriculture for income tax reasons
- 3 Tendencies toward integration in production and marketing
- 4 Many very large and efficient state agricultural experiment stations
- 5 State and federal agricultural extension service for rapid and widespread dissemination of production information
- 6 Extensive reclamation projects
- 7 Extensive production research carried out by private industry marketing agricultural supplies
- 8 Effective regulations for the control of plant and animal diseases
- 9 Effective regulations relating to plant and animal pests

All of these forces tend to prevent downward adjustments in agricultural production. Actually, they tend to bring about a continuance of production in abundance. Agricultural industries and governmental authority and agencies must co-operate to make a better balance of supplies and market requirements possible.

Agricultural Income and Marketing and Production Regulations

Agricultural income can be improved by improving marketing conditions and production controls when necessary. The problem of balanced income in agriculture may be solved by

- 1 Appropriate quality regulations in the marketing of each commodity
- 2 Diversion of surplus production
- 3 Advertising and sales promotion including nutritional education
- 4 Research in the fields of production, processing, handling and marketing
- 5 Quantity production controls when surpluses are imminent

Such regulations could be accomplished either through the democratic procedures of marketing orders or by direct legislation. Neither state or federal marketing orders are now authorized to

exercise production controls. If such authority were added on a quantity basis and not on an acreage basis, it would assist substantially in solving the problem of inadequate incomes in agriculture. Marketing orders are now helpful in assisting agriculture in retaining some of the economic benefits of efficiency in agriculture. If they were accompanied by quantity production controls they would be even more helpful in maintaining a proper balance between demand and supply forces in agriculture.

VI. PRICE-RAISING ACTION

Growers were concerned with what they termed unfair out-of-state competition and with sales below cost in California stores.

In a statement submitted subsequent to the San Jose meeting the Butchers' Union analyzed the way in which Georgia broilers continue to keep California broilers (which are slightly more expensive to produce because of lower wages paid in southern processing plants) out of the market.

It has been suggested, since some 90 percent of southern-processed poultry is consumed in other parts of the country, that a boycott of southern poultry might be effective in bringing about the establishment of fair standards in southern processing plants. But this suggestion founders on the extraordinary fact that it is very nearly impossible for the average consumer to distinguish southern poultry from California poultry. It is toward a solution of the problem at its core, and not the raising of any issue of trade barriers, that we wish to direct your attention, with such recommendations for action by the next session of the California State Legislature as may provide some relief while the greater, long-range problem is being considered by Congress.

Let us consider just three examples of unregulated practices, common in California, which make it difficult or impossible for you, the members of organized labor or housewives who do their purchasing at retail, to distinguish a bird raised and killed in Mississippi, for instance, from a California bird.

Here is a typical California jobber, the XYZ Company, and a fictitious but typical Southern processor, the ABC Company, operating in Mississippi:

1. The XYZ Company mails or ships to the ABC Company, from which it purchases poultry, a supply of wing tags, by which a bird is visually identifiable, bearing the XYZ Company's name, its California location, and its California plant inspection number.

The California tags are affixed by ABC to birds raised and killed in Mississippi, which are then packed and shipped back to California for consumption by Californians. It is difficult for a skilled meatcutter to tell the difference between a local bird and an imported bird marked with California wing tags. The ordinary consumer is literally powerless to make this distinction.

2. A second example, also common in this State, accomplishes the same result as that described above, but in a little different way.

Here the ABC Company affixes its own tags to the birds it kills and ships to California—tags bearing the ABC Company name

and location, and the ABC's plant inspection number. This would seem to solve the California consumer's confusion and eliminate the problem.

There is nothing, however, in either law or custom, to prevent the consignee jobber, the XYZ Company, from stripping the ABC's wing tags from each bird and substituting its own. Indeed, if the birds pass through the plant of a large primary jobber in California before reaching the XYZ Company's plant, the wing tags may be stripped and substituted by both the primary jobber and the XYZ Company—twice instead of once.

The result, of course, is the same here as in the prior example. Birds, produced and processed 2,000 miles away, are marked and legally identified, for every practical purpose as California bred.

Before discussing the third and final example, let us see by what means a Mississippi broiler, for example, reaches your neighborhood market and, ultimately, your table.

A bird, killed on Friday in Mississippi, is processed, tagged, and boxed on the same day—iced and loaded on a refrigerator truck. Barring breakdowns or delays due to weather, the "reefer" will arrive at the Central California jobber's plant early on the following Monday. In the case of those plants which receive only one shipment each week, the birds will be distributed by the jobber from his own refrigerators to his retail customers throughout the remainder of the week.

The customer, for example, who purchases a broiler from his own retail market on Saturday, buys a bird which is already a week old. Achromization, a process for "preserving" a bird after it is killed, guarantees, very nearly, that even a week-old broiler will offend neither your nose nor your palate. Achromization may not retard tissue deterioration, but it will prevent unpleasant taste or smell.

3. The third example involves the California market chain operator who packages poultry under his own brand name. Here, rather than shipping California wing tags to the Southern processor, the California operator ships transparent wrappers on which are imprinted the brand name and the name and location of the California market chain.

In this instance, the birds are packaged by the Southern processor in the wrappers supplied him by his California customer. It is perfectly true that a federal inspection code number is also imprinted on the wrapper. This makes it possible for any housewife who has a copy of the Department of Agriculture's inspection stamp code book to correctly interpret and identify Code Number USDA 177, for instance, as belonging to a processing plant somewhere in Georgia.

Each one of the examples briefly outlined above, effectively frustrates the accurate and easy identification, by the average California consumer, of the point of origin of poultry displayed and sold every day in thousands of markets throughout our State.

Certainly no one desires to prevent the California consumer who prefers Georgia poultry, from exercising that preference. But

there are countless other consumers who are being prevented every day, whether they are aware of it or not, from exercising their preference for California poultry.

We propose, therefore, that all poultry sold in California, including poultry produced in California, be marked in a manner which may be readily perceived and understood, with its point of origin and its date of kill.

We have noted that there is very little which your committee can do to curtail a flood of poultry crossing the borders into California from other states. Tariff barriers are objectionable. However, there is no reason that poultry, offered for sale in this State, should not be subject to regulations, imposed by this State, which would make it clear to the consumer whether or not a bird is locally produced and processed, or has been achromatized and shipped hundreds of miles before being offered for sale.

Legislation to accomplish this purpose was introduced in the 1959 State Legislature as Assembly Bill 66 (McCollister). Revised to conform to recommendations of the California State Department of Agriculture so that it contained no implications of "trade barrier" intent, it was nonetheless defeated by a powerful lobby led by the California Grocers' and Retail Merchants' Association.

Assembly Bill 66 would have identified "all chicken poultry meat and packages of such meat offered for sale in California as a fresh product" to indicate name of state in which grown or raised. Meat birds and turkeys were included in its provisions.

Labeling would also have had to show the "preservative drug or drugs" to which the product had been subjected.

We urge the Assembly interim committee to support this type of legislation.

We also advocate legislation at the state level providing for grade labeling of poultry sold at retail in California. Assembly Bill 2076 (Winton), introduced into the 1959 Session of the State Legislature, had this purpose. It was referred to the Dairy and Livestock Interim Committee for further study, and, so the best of our knowledge, no hearings on the measure have so far been held.

Since much of the testimony offered before your interim committee deals with problems of California poultry producers, we feel that such a measure should be included in your recommendations for alleviating some of the economic hardship under which California poultry producers are forced to operate.

Assembly Bill 2076 was drawn after many sessions conducted by poultry departments of the leading farm organizations in California and allied industries in conference with specialists in the State Department of Agriculture.

The measure authorized the Director of Agriculture to establish California grades, based on USDA grades, to assure that all poultry sold or advertised for sale at retail in California stores would be honestly graded by quality.

The immediate effect of enactment of such legislation, according to a joint statement presented to Members of the Assembly, June 4, 1959, by the California State Poultry Institute, the California

Farm Research and Legislative Committee, the Palomar Poultry Co-operative, Vista, the Orange County Poultry and Egg Producers Association; and the California State Turkey Federation, would be.

"To prevent attractively packaged, fancy-named, but inferior birds from being sold as a superior product. This would, obviously, benefit the consumer as well as the producer of highest grade birds. B and C grade birds will not be hurt since their actual quality and the purposes they are best for will be clearly established with the consumer under grading.

"Because it is impossible to grade mark or not to grade mark by destination, graded California birds may be at a temporary competitive disadvantage in some eastern markets (turkeys in this case, which California exports in quantity), where no grades exist on local poultry. However, within a short time, we believe that the California 'quality guarantee' will react in our favor in such markets.

"The grade marking should increase demand for California broilers and fryers which are not now a factor in the eastern market."

The cost of grading would require no state appropriation as it would be borne by processors.

FAMILY FARM

I. DEFINITION

In discussing a family farm, the question of a proper definition always arises. Rather than offering a detailed definition of a family farm, I would rather suggest some limiting factors in deciding what is and what is not a family farm.

First, a family farm must be large enough to occupy the time of the head of the family and to provide the family an adequate living and this is getting to the capitalization aspect. . . . Second, all management must be in the hands of persons sharing the risk. If the farm gets so large it must employ a hired manager, then it is no longer a family farm. In addition, the person or family managing and operating the farm must be taking the principal portion of the risk. I've not said anything about ownership of the land itself. In California we have many family farms operated on a lease basis. These farms give us the same economic and social advantages as the farms owned by the operator. The only difference is that the risk of land ownership is taken by some off-the-farm party.

It is the assumption of the risk of producing and marketing agricultural products and the management function which produces the social values of the family farms. Whenever anyone insists that the family farm is as efficient as any other type of production, it is only natural for someone to ask why the family farm is now in trouble. Why is it that many farmers are being forced off the land? Two reasons are apparent. First, economic progress itself dictates that labor leave primary industries, and for this reason some farmers will continue to leave the land. Second, however, is the problem of below cost prices. The family farm does not have the capital structure to withstand below cost prices over an extended period of time. Larger firms, even though no more efficient than the family farmer, may be able to withstand losses for a longer period of time by being better capitalized.

Our farmers farm to earn a living. In spite of the commercial nature of our family farms, the average income to all factors of production on California farms is only \$7,548 in 1958. This income includes income on investment, on management as well as the entire family's labor. The average capital value of land, buildings and equipment that same year was \$81,481. Computing a fair return . . . of say 5 percent on investment and subtracting it from the total net income leaves an average return of only \$3,400 for management and for the labor of the entire family.

Traditionally, when farmers have income problems they are advised to reduce costs. The clamor to reduce costs is so loud that some people think farmers are inefficient. Nothing could be farther from the truth. Compared with farmers in other countries, we have

the most efficient farmers in the world. The American worker is able to purchase more food with one hour of labor than workers in any other country in the world. Our farmers are also efficient compared with other industries. Since the production systems are different, about the only way to compare agriculture with industry is to use the comparative amount of capital equipment applied to each unit of labor. Using this ratio, we can say that agriculture is as efficient, if not more efficient, than any other industry because agriculture matches its labor with more capital than any industry in America.

It could even be said that farmers are too efficient for their own good. American farmers produce such great quantities of food with no means of regulating cost of production. This situation occurred in several of our industries in California during 1959. For example, tomatoes, cling peaches, eggs and avocados.

Technology has been blamed for the farm problem, but other industries have also experienced advances in technology and have been able to adjust without serious economic dislocation. Outside capital has also been blamed, but other industries continuously take in and assimilate outside capital without the unwarranted production increases that plague agriculture. I suggest, Mr. Chairman, relative freedom of entry causes agriculture to have problems of advancing technology and outside capital that other industries do not have. It is easier to either enter or expand in agriculture than in any other industry.

Technical barriers also inhibit entry into some lines of production. Technical guidance is not provided new producers freely in all industries as it is in agriculture. Psychological and physical barriers are not effective in agriculture. More land is available for production for almost any commodity, so we have no physical barrier. Psychological barriers cannot be created because product differentiation is almost impossible. Some people maintain that there are financial barriers to enter into agricultural production. But the federal government stands ready to loan money at reasonable rates for the purchase of farm land. In some cases state governments do the same.

At the same time, through vertical integration or contract credit a new producer can secure operating capital. So there is not the same financial barrier in agriculture as there is in other industries.

In many of the services and professions, legal barriers inhibit entry. For example, to enter the legal profession it is necessary to pass a bar examination. The lack of barriers to entry into agriculture compared with other industries is the basic reason agriculture cannot adapt to new technology and cannot assimilate outside capital without excess production. I recommend that this committee in its deliberations give some thought and study to the comparative freedom of entry as between agriculture and other industries.¹

¹ Dr. James Ralph, Davis Meeting, May 2, 1960

In our opinion family-sized farm operations can generally be classified as follows

1. Size

orchards and vineyards -----	110 acres
field crops -----	320 acres
dairy -----	100 cows
truck farming -----	60 acres
- 2 Equipment requirements
\$35,000 minimum
- 3 Eighty percent of the work done by the family with 20 percent being done by hired domestic or contract labor (such as hoeing weeds, etc.).
- 4 Steady or permanent farm employees generally provided housing or total or partial rental costs paid. In general, help of this type is good. However, seasonal help requiring skill (such as harvester operators) is very limited. Farm labor is generally available from local residents, contact with State Department of Employment or transient people. Seasonal help is obtained by hiring a labor contractor to provide a crew of field workers.¹

II. NEED FOR MAINTAINING THE FAMILY-SIZED FARM

The California State Grange, submitted a statement at the Davis meeting, indicating their viewpoints on independent farmer-sized farms and their necessity to the American way of life.

Since its organization in California in 1873, the California State Grange has championed the efficient, independent farmer-sized farm and, seemingly, today stands almost alone in its endeavor to hold the line against forces which are, day by day, destroying this way of life. The best illustration of the vast difference in ways of life is between the present independent, efficient family-sized farms along the eastern side of the Great Central Valleys in California, largely implemented by the water from the federal reclamation projects of the Central Valleys. Here you find, individual farms, busy merchants, thriving banks, modern schools full of happy children, homes as modern as tomorrow, and altogether a model picture of rural life.

Then take a trip to the present west side of the southern portion of the Central Valley where immense corporate type of agriculture is dominant. Contrast the dreary picture this west side affords with the east side. On the west side you drive for miles without seeing a modern home, very few schools, stores that are of a secondary nature—however, you do see barracks for nationals of another nation and the sad temporary places of abode for the migrant workers. We have no ill-feeling toward these people, but how much better it would be for this present western side of the valley to be peopled by the same kind of agriculture as now prevails on the eastern side of these valleys. If you transplanted the present conditions on the western side of these valleys to the eastern side, you

¹ Paul Enz, Fresno Hearing, September 29, 1959

would remove 90 percent of the banks, over 90 percent of the business homes, 90 percent of the schools would be empty, 90 percent of the homes would be empty, but you would have these large land holdings with migrant workers and nationals of another nation. Think what the economic impact would be to the business of the State with all these potential markets removed.

... Keep the efficient, independent farmer on his land, not as a sentimental or emotional idea, but a naked economic necessity to the proper development of the business of life of the State. How many of the modern necessities of 1960 living do the nationals of another nation or the migrant workers buy? General Electric, Westinghouse, Crane Company, RCA, in fact, the whole industrial empire depend for a sizable portion of their business on the independent farm family in California. . .¹

III. PROBLEMS OF THE SMALL FARMER

President of the Fresno County Farm Bureau, and operator of a family-size farm in the Del Rey and Traver areas, consisting of cotton, irrigated pasture, alfalfa, vineyard and grain.

I recognize there are problems for the smaller farmer, and I have been one for 20 years. However, I have been aware since 1952, of the changes taking place in agriculture and have applied myself vigorously in an effort to overcome some of the handicaps of being a small farmer. I want to emphasize this. There is no easy road to success in agriculture, and where a farmer has succeeded, it has usually taken a lifetime of sacrifices by the man and his family to achieve his goal.

You have indicated that you are interested in the problems of the small farmers and the impact which integration is now making in the field of agriculture. As a preliminary to study these problems, I find it necessary to classify into definite categories the types of farming operations now prevailing throughout the country.

First, the corporation farm which may be owned by one family, but is usually owned by a group of investors.

Second, we have the absentee farm owner who may operate through a farm manager from a lease to operating farmers. In this category we have retired farmers, the person who has inherited farm property, and the land speculator who has purchased rural property either as a hedge against inflation or for tax purposes. According to a recent U.S.D.A. release, 80 percent of all farms purchased since 1950, have been by nonfarmers.

Three, the family-owned and operated farm. Increased educational standards, together with increased utilization of scientific and technological advances, now make it possible for one farmer and his family to farm larger acreages and to produce more per acre. For the most part, those family-operated farms with adequate financial support who will put into practice the latest scientific know-how have fared quite well. In this same category, we have a separate problem, that of the family-operated farm possessing the scientific and technological know-how, but handicapped

¹ J. B. Quinn, Davis Meeting, May 2, 1960.

by a lack of financial support find it difficult to make the adjustments required to keep pace with modern-day needs. Acquisition of additional land and facilities has been made extremely difficult because of inflated land values brought about by the influx of non-farmer money being dumped into it. Potentially, this is the most efficient of all farm operations.

Four, we have the part-time farmer who has a full-time job off the farm and who supplements his income with a small farm operation. A high urban wage level supplemented by a wife's income often enables this farmer to purchase land at a relatively high price and to offer it at a relatively low efficiency level.

Fifth, we have the farm dweller who through physical or mental limitation or infirmities of old age are unable to or just doesn't want to be bothered with putting forth any extra effort and as a result has a family income that does not permit him or his family to enjoy anything approaching a decent standard of living.

There are many of our people who, having found difficulty in obtaining employment, have sought refuge on the farm. The same limitations which have prevented these people from entering fields of gainful employment outside of agriculture also limit their ability to farm profitably. This farmer has his counterpart in the city and should be considered a social problem.

As I know farming—and I have spent a lifetime in it—it is impossible for a man to farm say, 10 acres of land divided into two or three crops like alfalfa, grapes and fruit trees to make a decent living. Smallness and low volume are problems of most businesses today, and farming is a business as well as a way of life.¹

John Luhmann from Bakersfield testified.

I am a retired farmer and live on my farm of 80 acres . . .

There are many problems facing the small farmer today. Farm expenses are steadily going up, while prices a farmer receives for his crops are going down. Property taxes are up every year. The manufacturing of more and larger farm machinery is not to the best interest of the small farmer because they help the large operators to overproduce and cause large surpluses of farm crops. Due to the declining underground water, power bills are going up. Surface irrigation water will be higher.

The Canal Company serving my area is asking for an increase in water rates of more than three times as high as they have been in the last 20 years or more. With state construction of the Feather River Project, with irrigation water at from \$15 to \$25 per acre foot, the small farmer will be on his way out.

A farmer from Glenn County who raises beef cattle, almonds and prunes, submitted his viewpoints.

I would like to say something about this family-size farm. I live in a community in which all of the farms are family-size farms and they vary from 10 acres to 200 or 300 acres, and most of those who are living on those acreages that is under 40 acres

¹ John Stanley, Fresno Hearing, September 29, 1959

... if they are able to stay there they are staying there because their wives are teaching school or working in an office or because they are working out part time . . . and it seems to me that it just is getting to the point where a small acreage—regardless of what it's in—unless it would be very concentrated—as in the poultry business in which they concentrate a . . . quite a large effort on the small acreage, or orchard . . . or a small acreage of orchards might make it because it's a concentrated type of farming. But other than that, why the smaller acreages have to have supplement income from the outside¹

Cost-Price Squeeze

Since 1950, farmers have been faced with a cost-price squeeze, in part, the net results of these forces in operation. All reliable projections of long-run demand and supply in agriculture indicates that this phenomenon will be with us for some time. Continuous adjustments in farm size and internal efficiency on California farms will be required.

Major causes of this cost-price squeeze has been the increased use of purchased inputs in agriculture—the prices of which have increased sharply and the steady decline in prices received by farms²

Shasta County's Farm Advisor re-affirmed this problem at Red Bluff:

Shasta County ranches are like all others. They are caught in the price squeeze brought on by rapid rising costs and the decreased merchandise prices for what they have to sell . . . or at least the prices all the same on Shasta County's number one crop is beef cattle. So far as we can figure right now, there is somewhere around 40,000 head of cattle in the county. In the winter time there is many more than that because a lot of them come in from winter pasture. Feed is one of their serious problems at the present time brought on by . . . this is the third year of drought plus a decrease in feed on government lands by increased brush and increased undergrowth in national and state forest service lands and grazing grounds. Many of the ranchers speak of the vast difference in the condition of the forests today compared to 25 to 40 years ago. They say they are rapidly getting worse with more brush and less feed for cattle, sheep and wildlife³

Vertical Integration and the Small Farmer

Usually, further technological innovation on the farm, plus increasing the size of the operation provide the answer in today's agriculture. Many who have been unable or disinterested for one reason or another in making such adjustments have attempted to meet the competition in one or of two ways. Individual producers have entered into a variety of types of contractual arrangements with processors and marketing agencies in the one hand and with suppliers of inputs on the other. While often insuring an outlet for their products, obtaining access to needed production credit,

¹ Neil Butler, Red Bluff Meeting, August 26, 1960

² Dr. C. O. McCordle, Davis Meeting, May 2, 1960

³ Jesse Bequette, Red Bluff Meeting, August 26, 1960

and perhaps availing themselves of technical advice; this type of integration reduces the scope of managerial decisions for the individual producer. In the extreme case, the producer is reduced to little more than a hired laborer with his income approximating wages. This type of integration, which has become widespread in certain types of production in other regions of the United States, has not become widespread as yet in California.

At the other end of the integration scale, many individual producers, both small and large, have organized to process, market, purchase or bargain co-operatively, thus availing themselves of many of the advantages of large-scale operation. Opportunities for producers to exercise managerial skills are thus extended beyond the individual farm. Producers receive the benefits of profits ordinarily taken at the processing level and even at the marketing level where integration extends to that level. Rapid expansion of one grower-owned firm processing fruits and vegetables in California—in the beginnings of a second in evidence—attests to the profitability of this type of integration. Higher contract prices offered to producers helps to attract and hold members and insure adequate supplies of raw materials. This type of integration demands competent, informed management—characteristics farmers develop in highly-commercialized agriculture. This form of integration is fully consistent with the long-run maintenance of an independent and financially strong agriculture provided individual members continue to maintain internal efficiency in their individual producing units.

The need for further empirical research into first, the effects of size of operation on net earnings in California agriculture; second, the impact of changing market organizations and structures on individual producing units should be obvious from this discussion.¹

A member of the Rosedale Farm Center declared at the Bakersfield meeting that

Vertical integration, in general, is shortening the operations between industry and producer than between producer and consumer.

This is a general overall problem in adjusting to a higher standard of living through higher efficiency in operations.²

Bargaining Power

We have no bargaining power whatsoever. We produce a crop. We fight the elements, we fight the bacteria, infections of all kinds, and then we haul it into town and offer it at the market at whatever price is offered for it. We have no bargaining power whatsoever. Now, I would like to take that into integration just a second and compare it, if I may. I see no place in integration that would give the farmer any bargaining power as to his criteria of the food dollar. I believe, that in certain forms of integration that it would seem as totally destroying smaller farms, simply because of the different economics involved by the various segments of an inte-

¹ Dr. C. O. McCorkle, Department of Agriculture of Economics, University of California, Davis.

² Paul Enz, Bakersfield, September 30, 1953.

grated program. So, if we are to live by integration, or if we are to live on the free market, it seems to me that there must be some form of legislation that would give us a little more bargaining power.³

The Deputy Director of the State Department of Agriculture testified at Davis:

Unregulated or unplanned production merely accentuates the problem the farmer has always faced, and that is weak bargaining power. Because the farmer markets a perishable product he has never been in a position to store his product and wait for a proper price as other industries are able to do.

First, we encourage co-operatives which enable farmers to share in the returns possible from handling or processing their own produce. Or the returns possible from supplying themselves with the factors of production.

Second, we encourage bargaining associations. A bargaining co-operative is especially appropriate for producers not in a position to form their own processing co-op. Through a bargaining association, farmers can bargain with private handlers for a price on their product. We are also encouraging the use of self-help marketing order programs. Marketing orders are an extension of a co-operative approach which enables producers to do for an entire industry that which they could not do through a voluntary co-op.

Under a marketing order an industry may influence the point of intersection of supply and demand curves. In agriculture we often hear the term "supply and demand" and many people say that we should not finagle or fool with the law of supply and demand. It is true that the market price of a product is, for the most part, determined by the relationship between the supply of the product offered and the existing demand for it. Other industries have also accepted this economic law, but they have discovered that price may be influenced either by changing the supply or by changing the demand. In other industries a firm plans what amount of production it can market profitably and production is set at this level. Because agricultural people have not yet reached this stage of planning, they continue to have problems. Through a marketing order program, farmers are able to approach this type of market planning. By research, quality control or promotion they are able to effect a demand. By evening out the flow to market or by marketing produce they are able to effect the supply. In either case, the result is normally an improvement in price and brings agriculture closer to acting alike or similar to other private enterprise industries in America.

Recently questions have arisen as to the legal rights of producers to organize and bargain collectively. At the request of this committee, the Department of Agriculture is studying the question of the legal rights of co-operative bargaining associations. The Director of Agriculture is directed by the Agricultural Code to promote and encourage such associations. We do not believe it would

³ Charles Paul, Fresno Hearing, September 29, 1954.

be proper for us to promote or encourage bargaining associations if a producer could be discriminated against by reason of membership in such association. Therefore, if we find legal protection for members of bargaining associations is inadequate, then in compliance with the direction we have received from this committee we will recommend to the next session of the Legislature sufficient changes in the code to provide the protection necessary." ¹

Marketing

A Kern County Grange member testified in Bakersfield

To my own personal understanding, the family-sized farm is giving way to the larger organizations in farming.

The ever-increasing costs that the family-sized farmer must pay, combined with the ever-decreasing prices that he must receive and the limitations that he must observe are driving the family-sized farmer off the land. ²

A small truck farmer in Fresno County, who had been making a living off his two acres, raising radishes, green onions, turnips, mustard greens, etc., for the past 15 years, found it impossible to continue

. You can't sell to the stores anymore. The wholesale houses won't let you do that. You have to sell to the wholesale houses, and the last three years I went behind because I couldn't sell to the stores. See, before I sold to the stores all the time, and now they forced us to sell direct to their wholesale house because I couldn't supply these big stores, there are so many of these big chain stores that I couldn't supply all of them. I had to supply a certain amount of them and they didn't want a few of them, they didn't want to buy them from me. ³

He recommended "Always find out if he has a market before he starts to raising because I've seen several guys go broke on 40 acres. If you've got the market beforehand, go around the wholesale houses and ask them if they'll take the stuff beforehand." ³

Victor S. Cerro, President of the Kern County Farm Bureau indicated at Bakersfield that co-operatives give aid to the small farmers in their marketing problems.

There were times, perhaps, when the small farmer had some problems in marketing his crops. Today, many of these problems have been solved through the voluntary organizations of individuals into co-operatives. The marketing of a crop, with many small lots, is put into the hands of one organization for greater strength in the market. The farmer has found that he alone cannot make a market, but a large co-op, which in many cases markets crops the year around, or carries surplus crops over to lean crop years, can do this job very satisfactorily for him.

¹ Dr. James T. Ralph, Davis Hearing, May 2, 1960.

² Amberg, E. Harlie, Bakersfield Hearing, September 30, 1959.

³ Merle Peco, Fresno Meeting, September 29, 1959.

A representative of the California Farm Research and Legislative Committee indicated

To my mind, the type of family operation we seek to protect and perpetuate is an efficient unit of a size large enough to yield the volume of commodities which can be sold at a fair profit. This fair profit would and should be made possible by providing opportunities for the farmer-owner to take full advantage of all technological improvements consistent with the size of the unit; affording him machinery through state and federal marketing agreements to tailor production to estimated market requirements, making provision for government storage of nonperishable commodities through parity supports, nonrecourse loans and/or export payments where required, making similar provision for perishables through government purchase programs; incentive payments or income deficiency payments to achieve a fair price to farmers at the lowest possible cost to consumers and taxpayers.¹

Urbanization

In Santa Clara County, Mr. R. V. Garrod, a farmer in the area since 1892, stated

Urbanization—biggest problem. We have small farms that the owners used to own and work and now the owners or successors usually rent those places and have gotten themselves another job and go backwards and forwards to town working on some type of industry. We have the school problem and the market problem as far as I am concerned has been worked out. I haven't got any.

A representative of the Tehama County Association of Soil Conservation District told of the problem the northern counties are facing:

The family-size farm as we generally think of family size farm are going out because in a lot of places of what I referred to are taking the better soils, or best soil . . . highways, parks, subdivisions because they can't afford to go out there and get enough acreage to do any good. The family size may be 20 acres and maybe 1,200 acres or 1,500 acres, depends entirely upon the soil that is in that farm. If we continue, in the State of California, to take our best soils out of production for highways and beaches and parks and we know we need recreation and we know we need highways, but if we continue to do that someday in the State of California there is not going to be land enough to begin to raise enough food for the people to use.²

The Santa Clara Planning Commission representative explained the problem that prevails in this agricultural area

Santa Clara County is a county full of small farms and every farm we lose is a small farm because the land is so fertile that it has been economically feasible to use a very small unit of land have a very productive agriculture, and consequently our farms are

¹ Joe C. Lewis, Bakersfield Hearing, September 30, 1959

² Lynn Raymond, Red Bluff Hearing, August 26, 1960

not thousands of acres, generally speaking, but they run from 15, 20 and maybe 30 acres is an average farm and these are the kind of people that cannot stand the high taxes, the production of this land . . . true the bountiful earth does produce well—but the margins of operation are low on these kinds of activities and when taxes go up and when the security of, is wiped out by speculation then the farmer is really in trouble and that's our problem here. Many farmers don't want to sell their land, but they have to sell out because of the way in which the economic situation has been distorted by the speculative aspects of this problem.

There is no question about the fact the assessed value of the county has been increasing as the growth has been taking place. The industry that come, and the people that come, and the problems that come along with it. Now the question is, is the assessed value increasing the assessed value proportionate to the magnitude of the problems that are developing along with it. The half-billion-dollar highway program we face, is one case in point. Now this is something that is new. This is going to be saddled onto the farmer as well as on the urbanite, but it is the urbanite that has produced the freeway problem and the expressway problem and the major thoroughfare problem that we have, and it seems to me that this inequity revolves around who benefits from the expansion and how much can you penalize the agricultural unit in this regard. Is it really right and practical for us to penalize them out of business in a place where the soil is so productive that agriculture still in the county is one of the major economic legs, and our projections for 1975 indicate that by the time—if we continue to do what we have been doing in the last 10 years we will not have any of it left. We will practically have absorbed every bit of our land into urban use.

There is the problem, too, now you take 1950, when I first appeared on the scene. There wasn't a single school district in this county that was impoverished. Every one of them was functioning all right within the framework of its bonding capacity and the traditional scheme of taxation. But now every one, not every one of them, but almost all of them in the metropolitan area are impoverished and operating under state aid and they are all bonded up to the limit of their bonding capacity and they still haven't got enough bonding capacity to build, well we are building two schools a month, two elementary schools a month in this county and this it seems to me gives them another measure of what we are going through and, obviously, we aren't able to pay for it. The new urban population coming in isn't able to pay for it. We are having to borrow from the State in order to do it and we are relying on the State to build a quarter of a billion dollars worth of freeways and we think that we may possibly get some of it built 10 years from now, but we are not too sure.

. . . I would like to say this, that your appraisal of what's going to happen to California in the future, I think is very right and maybe if only 5 percent of the economy is agriculture in the future, we should be careful that agriculture is not out on the desert somewhere on the worst soil in the State, but that it's on some

of the prime soil in the State where it can compete effectively with and pay for the irrigation water and the other things that it has to buy in competition with urban area. Agriculture is never going to be able to compete fairly on submarginal soil and my contention is that where you have your good soil there should be some effort made to, potentially in the long-term, that we do have at least a partial stay to our economy in agriculture. I am also content that this distribution of population in the metropolitan areas has a great deal to do with the strength of the economy. For instance, in the case of San Jose, there are 19 rural school districts now, none of which, all of which are dependent upon their own resources. They are "bedroom school districts," they are rural school districts which are completely composed of residential development on agricultural land. They have on tax base, one of the things that certainly could be studied would be some way of redistributing the tax money for school purposes in metropolitan areas so as to more equitably support school programs in these areas where there is no tax base, it's just residences and agriculture and they struggle along as best they can with high tax rates, some of them \$4 and \$5 tax rates which practically make a farmer in a situation like that inoperative.

I think it's something that the committee might look into as to how we could better distribute the cost of school taxes onto a basic, like a metropolitan area, so that one school district doesn't become impoverished and is in debt to the State up to its neck and the other school districts which happen to be lucky enough to get Lockheed or Ford sitting in the middle of them, and all the people that work at Lockheed and Ford live out in some little rural school district somewhere, they get no help whatsoever from the addition of that tax base to the school district. Now in this county, three of our big industries are sitting in little school districts that are out in the country I might say.¹

Taxes

Farm tax costs are mounting rapidly. Many ranchers in Shasta County feel there is not an equitable distribution. For instance, no cow in California is exempt from tax or any other phase of farming . . . that is exempt from tax. It doesn't matter if the calf is born before March 1st or when . . . they have to pay taxes on it. . . but lumber industries have cut over lands exempt for a period of 40 years. It is thought by many of these fellows that they are harvesting poles continually from good . . . and selling them for a good price . . . of that same land that is exempt from tax. Big construction and logging equipment is depreciated out in a few years. One logger brags about his 20-year-old truck depreciated about 15 years ago from tax, is still bringing him \$100 per day. Our farmers are wondering is this a fair . . . is this an equitable distribution of taxation—Jess Bequette, Shasta County Farm Advisor at Red Bluff.

¹ Carl Belser, San Jose Hearing, October 15, 1959

Water

A farmer testified at Bakersfield:

We all know our water table is falling fast here. And I think we should stop reclaiming new land and putting down more wells on new land until we get more water. It just doesn't make sense expanding when we are already raising too much and taking out land because of lack of water.¹

Labor

At Red Bluff, the representative of the Butte County Farm Bureau, and Agriculture Director of Chico State College brought to the attention of the committee the problem

I'd like to say on this labor situation as it affects the small farmer. Organized labor is saying that they are out to get the corporation farm . . . the big farmer . . . and they are all for the family farm, but the way it looks to me is that these larger farms can probably afford to mechanize . . . they have the capital to do it and I have seen peach mechanization where they cut the cost . . . \$10 worth of peach picking down to \$2 worth of peach picking . . . this can be afforded by the larger establishments and it can't be by the small farmer . . . so this unionization of farm labor could probably do more harm to the family farm than it could to the large farm.¹

Manager of the Bakersfield Production Credit Association and Kern County National Farm Loan Association, and speaking for the Rosedale Farm Center testified:

Farming, particularly of perishable crops is inevitably hazardous. In addition to weather, insects, water supply and prices, there are the problems of an unstable and unreliable labor supply at critical moments.²

IV SMALL FARMS DECREASING IN NUMBER? GIVING WAY TO CORPORATE FARMS?

. . . Farm population dropped more sharply during 1950, to 1957, than during any other similar period on record. The big drop in farm population came during the period of big farm programs. Government farm programs, in general, have made the already successful—more successful, and the least successful—further handicapped. Young people have been and are leaving the farms in unprecedented numbers. The reason is clear. There is more money in town . . . jobs offering our young people a higher standard of living. At the same time there has been a great influx of nonfarmer investments into farming for reasons other than for straight income.

Now, what does this all mean in respect to our conventional concept of agriculture? First, the number of farms has decreased by 11½ percent since 1950. Second, between the period of 1950 to 1954,

¹ Loren Phillips, Red Bluff Hearing, August 26, 1960.

² James C. Beagle, Bakersfield Meeting, September 30, 1959.

³ Ray Jensen, Bakersfield Hearing, September 30, 1959.

the average farm increased in size by 12½ percent, or more than 26½ acres, and has been more rapid since. The average-size farm in the United States in 1954 was 240.2 acres. In 1935, there were 6,812,300 farms of which 47.1 percent were fully owner operated. In 1954, there were 4,782,416 farms of which 57.2 were fully owner operated. The significance of this fact must not be overlooked. Although there has been a decline in the total number of farms, there has been a substantial percentage of increase in the percentage of fully owner-operated farms. There has been no substantial increase in the total number of acres devoted to agriculture in recent years. These figures were obtained from the 1954 census report.¹

A representative of the California State Grange declared at Bakersfield

The small farmers are decreasing and large operators are increasing and buying up. I know that around in my community where the larger operators are buying out the small ones and incorporating into larger farms.

Factors contributing to the disappearance of the family-size farm are improper legislation, politics and the corporate farmer influence of the federal farm program. It is becoming harder, day by day, for the family-size farmer to exist against these ever-mounting odds. More and more people who have earned money in other businesses or professions wanting to speculate and evade the federal income tax program contribute to the overproduction and lower markets. This creates hardships on the small farmer who depends on the small acreages for his whole living.

Family-size farmers are decreasing according to official government figures and corporate farmers and the big money people are saving there is no place in farming for the little man any more.

Any community that is made up of family-size farms and farm families, schools, churches, community service organizations, help to make a stronger and healthier America than thousands of acres of the corporate farms with shacks for the transient farm labor.

A good example of this is the west side of our own San Joaquin Valley. Therefore, I say a community made up of family-size farms are much more desirable than the large corporate farms of the absentee landowners who are waiting for a government handout from the farm program.²

The Kern County Grange energetically urges that every avenue of agreement be explored with all possible promptness to the end that we encourage large corporations to portion out land in family-size leases may become a reality as soon as possible so that Kern County may realize its benefits at the earliest date.

As usual the family-size farmer congested in certain areas where there were some future period that they were able to buy this land. But today, you cannot expand out, and their acreage allotment is so reduced, and still it's being applied to new acreage. Development of new acreage, some of this cotton allotment goes

¹ John Stanley, Fresno Hearing, September 23, 1959.

² Clarence Kofahl, Bakersfield Meeting, September 30, 1959.

to new acreage, and for the family-size farmer, south of town as I know, many of them are being cut, even more cut in acreage allotment as I understand this year¹

* * * * *

Family farms are not giving away to corporate farms, however, family farms are getting larger by necessity. We find our margin of profit per unit produced is continually narrowing because of higher costs of farm equipment and machinery, utilities, freight, labor, taxes, pest control, farm supplies and deeper water lifts with a continual decline in average prices received for our farm products²

The President of the Kern County Farm Bureau asserted the contrary at the Bakersfield meeting

I do not believe that the family-size farm is giving way to the corporate farm, but I do believe that the large, more economical family-size farm is replacing the inefficient, small subsistence farm which provides no more than a substandard living for its owner. I learned just yesterday that there are over 1,000,000 farms in the United States with incomes of \$1,000 or less per year. I am sure that this is not the type of farm that anyone would like to see exist in California.

Farms must grow larger to be able to pay for the expensive equipment which today's mechanized farms require. In many cases the equipment and wells needed to farm 80 acres, will easily farm 160 or more acres. There is a natural trend for that farmer to try to increase his acreage to keep pace with his investment. Still another problem that leads to larger acreage is the shortage of labor. The farmer must replace this labor shortage with equipment, and in order to keep this expense busy, he must acquire more land³

Dr. C. O. McCorkle, Department of Agriculture of Economics, University of California, testified at Davis

Farm size whether measured in acres or gross returns for operator or capital inputs or any other of the conventional methods has increased steadily in California. This increase is reflected in each of the eight major districts of the State, though, the increase has been greater in some districts than in others.

This change has been due, in part, to new land being brought into cultivation, but primarily to consolidation of existing farms into larger units with a corresponding decline in the number of farms. This has been particularly marked during the past eight years, when farm numbers in California have dropped from 144,000 to 131,000 that is from the period 1950 to 1958. I might point out, in passing, that there are differences in figures that you will find on farm numbers depending upon the source of information. This information happens to come from estimates from the U. S. Department of Agriculture rather than census estimates.

¹ Gilbert Dalton, Bakersfield Meeting, September 30, 1959

² Paul Enz, Bakersfield Meeting, September 30, 1959

³ Victor S. Cerio, Bakersfield Meeting, September 30, 1959

Indicative of the economic pressures placed on small farms is the fact that between 1950 and 1954, about 95 percent of the decrease in farm numbers took place on farms under 180 acres. Of this number, 63 percent were in farms of under 30 acres. In terms of value of products sold, the more realistic measure of size, it seems to me, the sales per farm measured in constant dollars rose from about 49 hundred in 1940, to 82 hundred in 1954. In terms of efficiency in resource use, available evidence certainly indicates that inefficiency concentrates in the small farms, that is, those selling less than \$5,000 worth of farm products.

Farm size increases in California have taken place primarily for three reasons: (1) technological advances making large-scale farming possible and profitable, (2) economic pressures for greater efficiency, (3) changes in the structure of markets facing producers both on the buying and selling sides.

These forces are by no means independent of one another, and in most instances they have been mutually re-enforcing. Technological change in agriculture is, ordinarily, output increasing causing increased production, lower prices and increased pressure for greater efficiency in the use of all resources on the farm including further technological change. Since the adoption of technological innovation in agriculture usually requires sizable capital investment, fixed costs of farming rise, adding further impetus to increasing farm size in an effort to spread these increased costs over more units of output.

Any discussion of farm size, particularly as agriculture continues to become more commercialized, more is mentioned of the concept of the "family farm" for whatever this may mean. Unfortunately, rather gross misconceptions have been perpetuated by defining the family farm in terms of a given number of acres and sources of labor.

Basically, the family farm has always been correctly defined only in terms of the source of management. As new technology is introduced in agriculture, necessary adjustments in farm organization and size call for increased managerial capacity of individuals. Thus, a realistic definition of the family farm today, and historically for that matter, can only be in terms of management and capital in the hands of the farm operator and his family. Thus, family farms for today's agriculture may include today's large commercial farming operation as well as those where the operator and his family still provide the labor. The fact that many small farms continue to exist is often used to support the argument that these farms must be highly efficient and can compete with the larger farms. This fallacious argument stems from lack of understanding of the nature of farm earnings. In these smaller operations, the farmer is the source of capital, labor and management. His earnings accrue from three sources: interest on his investment, wages for his labor, and profits from his management. If he is willing to accept below market rates of return on one or more of these elements, as most small farmers today are doing, he can remain in business for extended periods of time. Realization of

these facts, plus excellent opportunities for themselves have accounted for a large drop in the numbers of small farms

One further misconception with respect to farm size has resulted in much misunderstanding across the nation, perhaps more outside of California than within

The idea is widely held that large-scale commercial farming and corporation farming are synonymous. It is true that the few very large farming ventures are generally incorporated business entities. But thousands of family farms today across the nation are being incorporated in order to finance their operation more readily, to protect the farm family assets, to facilitate continuity in ownership and control or for other reasons. While such practices tend to be frowned upon by many persons observing agriculture today, it is difficult to condemn informed farmers for availing themselves of the business techniques and practices that can assist in management in managing a farm operation for profit.

The point was made earlier that a factor influencing size in agriculture in California today was the change taking place in the organization of markets, in which farmers buy and sell. Volume discounts on materials, free technical services and free use of certain types of equipment are examples of the savings in inputs accruing to commercial farm operations today. The major pressure toward larger farm operations, however, is coming from the markets to which farmers sell. It is particularly true in such California specialties as fruits and vegetables, but it extends to other commodities such as livestock and milk as well. One research project currently underway is examining the effects of market organization on location and operation of market milk dairies in the Los Angeles milkshed.

Today, buyers of many agricultural commodities want to specify volume, quality and time of delivery. Furthermore, as in the case of fresh fruits and vegetables, the farmer who can furnish the volume and quality of a variety of products over a long season is in a position to obtain substantially more favorable prices. Again, I am referring to fruits and vegetables. When some farmers avail themselves of price advantages by meeting the demands of the buyer, other producers are in a poorer competitive position and must adjust to meet this competition.

V. FAMILY-FARM SAFEGUARD—THE CO-OPERATIVE

The Executive Secretary of the Butte County Farm Bureau testified at Red Bluff the area in which small farms could receive aid.

The Executive Committee of the Butte County Farm Bureau discussed the subject this committee wished to hear testimony on. The committee felt that the farmer-owned co-operatives are the primary safeguard of the family farm. Through these, the producer is able to provide the market with a quality of product that would be found acceptable, to stabilize the production and marketing costs so as to place the producer in a sound, economic position and provide the buying public with a standardized, high-quality product economically priced. And we brought up the question, the family-size farm. It was felt by the group that they have kind of

lost the definition of a family-size farm. It's hard to understand now just what the people are meaning when they say family-size farm because of the economic growth of this country. That it is really hard to define, and one of the fellows had this statement to say:

"We must recognize that the family farm varies in size with the variety of crops produced. The economic size for one crop is not necessarily the economic size for all crops." My personal opinion, since I have been working with the farm people and visiting the different growers in different commodities that the ones I have met, dairymen, etc., what is good for one commodity or group of commodities doesn't always hold true for one commodity or another group of commodities as far as farm co-ops. One feature of a farm co-op I think essential is the management phase of it. To have a good co-op you must have an efficient management running that co-op for your farmers; they are governing what you do. You should have men that are capable of looking for your interests and not looking for theirs.¹

Tad Tomita, strawberry grower from San Jose iterated:

It is my conclusion that in the berry industry the co-operative form of association is the best solution for the average size family operator. This is because in contrast to many other commodities, economies are not gained by expansion beyond a five to ten-acre operation. A five-acre strawberry farm, for example, in an average price year, with three members of the family contributing to management and labor in the various processes from planting to picking should net approximately \$10,000. Of this sum, the full-time head of the family's share would be \$5,000 and that of each of the part-time members of the family \$2,500. In addition, seasonal farm labor must be employed at harvest time. By banding together in a co-operative such families have demonstrated that as owners of a fresh shipping, frozen processing and marketing organization, they can realize savings which as independent operators would be closed to them.

¹ LeRoy Bader, Red Bluff Meeting, August 26, 1960

CENSUS STATISTICS ON CALIFORNIA AGRICULTURE

Dr. Kenneth R. Farrell, extension economist in marketing, University of California Agricultural Extension Service.

The total land area of California consists of a little more than 100 million acres. Of this, about 10½ percent is used for crops, 28½ percent for grazing, 36 percent for forest and watershed, 4 percent for road, urban and industrial uses, and 21 percent is wasteland—chiefly in the deserts of the State.

Now changes in definitions for census purposes make it somewhat difficult to obtain exactly comparable data over time. In 1954, census of agriculture indicated that there were about 38 million acres of land in farms in California, as compared to about 35 million acres in 1945, and 36 million acres in 1950. About 30 percent of this apparent increase of 2.7 million acres of land in farms—between 1945 and 1954—was in the San Joaquin Valley; with another 17 percent of this increase occurring in Southern California and 10 percent in the Central Coast area. Census data also indicate an increase of about two million acres in cropland between 1945 and 1954, of which 62 percent was in the Central Valley. By the Central Valley, I mean the San Joaquin and Sacramento Valleys. This, despite the estimated loss of some 820,000 acres of cultivable agricultural land to public and private uses between 1942 and 1956, the total land base of California agriculture has apparently been increasing in the postwar period, at least, through 1954—the latest year for which census data are available.

Of the cultivable land, that is, that 820,000 acres which is estimated to have been converted to public or private use between 1942 and 1956, about 52 percent of the conversions were in the three-county Los Angeles area and the six-county Bay area.

Of the six million acres of land estimated to be suitable for cultivation, but not now used as such, California Department of Natural Resources and the Soil Conservation Service of the United States Department of Agriculture have estimated that 55 percent of this land which would be physically possible to bring under cultivation is in the Central Valley of the State.

On the basis of projected population increases in the State and the likely geographical location of this population, it seems apparent that the locus of crop production in the State will be shifting more and more into the Central Valleys.

Between 1945 and 1954, the number of farms in California declined by 16,000 or about 11 percent to 123,000. As expected, the greatest decline in numbers of farms has been in Southern California where they had a 20 percent decline. The San Francisco Bay area counties 22 percent decline and the Central Coast area 14 percent decline.

At the present time, roughly 44 percent of the farms in the State are located in the Central Valley and 28 percent in Southern California. As numbers of farms have declined and land in farms increased since 1945, the average size of farm has increased from 252 acres in 1945 to 307 acres in 1954. An increase of about 22 percent in the average size. Of the 123,000 farms in 1954, 72 percent were classified as commercial by census definitions. The balance of these were part time, residential or owned by institutions.

Of the 89,000 so-called commercial farms in 1954, 18,000 farms with sales of \$25,000 or more, which represent about 22 percent of all commercial farms; 18,000 farms accounted for 75 percent of the total sales of all commercial farms in the State. The same group of farms accounted for 80 percent of the total expenditures of all commercial farms for hired labor.

Putting it another way, or combining the figures in a different way; 43 percent of the commercial farms in 1954 accounted for 90 percent of the production and 92 percent of the expenditures for labor of all commercial farms.

While the total number of farms decreased between 1945 and 1954, the number of farms consisting of 1,000 acres or more actually increased by 5 percent. The amount of farm land held in farms of 1,000 acres or more increased by 14 percent and the amount of crop land harvested in this category of farms increased by 30 percent between 1945 and 1954.

Farms of 500 to 999 acres decreased 1 percent by number, retained about the same amount of farm land, but increased their total crop land harvested by about 20 percent in this same period of time.

In 1954, as against 1945 all size classes up to 260 acres decreased in number and lost land both in total and in terms of harvested crop land.

It is apparent from these data that since 1945 there has been a definite trend towards larger farms. This direction of change has been accelerated by two factors. First, the absorption of small farms by large ones, and secondly, the development of additional farm land—particularly in the large size classes.

CALIFORNIA'S LABOR

In comparison to agriculture in some other parts of the United States, California agriculture uses relatively large amounts of labor. University of California studies indicate reductions in labor requirements between 1950 and 1959, of one-tenth in the case of livestock and poultry, two-fifths for fruit crops, one-third for vegetables and one-fourth in the case of field crops. This same study indicates that the volume of production in California in 1950 could have been achieved using 1960 methods with about 27 percent less labor input. Yet, as the aggregate output of California agriculture has increased by close to 30 percent over 1947-49 levels, there has been a fairly continuous upward shift in the total labor input of California agriculture.

In 1949, the average monthly number of persons employed on farms was 411,000—consisting of 152,000 farmers and unpaid family workers, 154,000 hired temporary domestic workers, 100,000 year-round domestic workers and 5,000 foreign contract workers. By 1957, the average monthly total had risen to 464,000 persons as contrasted to 411,000 in 1949. In 1957, the average number of foreign contract workers was 52,000. With peaks, of course, running up as high as I recall in the neighborhood of 80,000. Despite the apparent increase in numbers of workers employed in use of labor as the result of the tremendous increases in capital inputs in the State. The point I am making is that while labor is increasing, that the use of machinery and capital has increased even more rapidly, so that relatively, labor inputs have declined

PRODUCTION PATTERNS

Now I would like to shift to the brief description of the production pattern in the State. I think that there have been perhaps three important changes in the State's production patterns in recent years. *First*, of course, increased total agricultural output associated with increased total inputs such as cropland, labor and capital, and rising productivity of resources. For the Pacific area, as a whole, farm output was about 30 percent higher in 1958, than on the average during 1947-49. The second important change, I believe, have been the rather sharp increases in the absolute and relative value of field crops and livestock production in the State. The relative importance of field crop production which is composed chiefly of cotton, alfalfa and barley has increased from 17 percent of the total value of all farm products sold in 1940-45 to about 24 percent on the average during 1955 to 1958. Livestock and livestock products as a share of total cash farm income rose from 30 percent to 39 percent in this same period of time. In the meantime, while the absolute dollar value of fruit and nut crops increased about one and one-half times, the relative value of these crops in relation to total cash farm income has fallen in recent years from 36 percent on the average during 1940 to 1944 to about 20 to 22 percent of the total in recent years.

The third change, I think relates, or springs from the pressures of population on agricultural land in Southern California and in the Bay area of Northern California particularly. I think that this pressure coupled with the development of agricultural land and water resources in other parts of the State has resulted in a rather striking geographical shift of certain types of agricultural production within the State. In general, the more extensive land using type of agricultural production has declined in both absolute and relative terms in the southern and northern metropolitan areas, leaving in a position of relatively greater importance in these areas the more intensive market-oriented cattle feeding, dairying and horticultural specialty industries.

If you define Southern California to include Tulare County and southward, Southern California production of fruit and nut crops as a percent of the total value of production in the State declined from 50 percent to 20 percent between 1953 and 1958. Vegetable production in Southern California dropped from 20 to 15 percent while field crop production increased from 10 to 25 percent, and livestock from 20 to 40 percent of the total value of production in the State.

Despite the relative decline in the agricultural position of the southern metropolitan area, the total dollar value of agriculture, however, in absolute terms has actually increased. The point I am simply making is that the product constituency of agriculture has changed substantially in the southern metropolitan area and in the Bay area also, but that in total dollar sense, agriculture has not declined. The San Joaquin Valley accounts for an increasing percentage of the value of California farm output with 61 percent of the state output of field crops, 37 percent of the fruit and nut crops, 26 percent of the vegetables, 26 percent of the poultry products and 34 percent of livestock and dairy production.

MARKET CHARACTERISTICS

Now, briefly, looking at some of the market characteristics: California agriculture has long emphasized the production of commodities for which it has had a comparative production advantage rather than concentrating on supplying the needs of California or the western United States. As California has increased, products such as cattle, wheat, butter and eggs which were once produced in quantities in excess of state requirements have become deficit in state production. As these deficits have occurred, they have been met by in-shippments from other states. Meanwhile, the production of export commodities has continued without close regard to the size of the State's market, thus, the dominant influences governing the agricultural output of the State have been those of demand outside the State. Future changes in production, even if the State continues its rapid growth, are likely to be influenced much more by national and world market conditions than by the size of the State market with the possible exception of commodities such as market milk. The significance of national and world markets can be appreciated when it is recalled that about 45 percent of California's agricultural production is shipped out of state. World markets are vitally important to many of our fruit and nut crops, cotton and barley.

. . . With the likelihood of increased California production of fruits and nuts in the next decade, and with an established and growing food processing industry in the State, which, by the way, now packs about 53 percent of the canned fruit in the country, the long-term growth in demand result from increased national population and income are indicative of sustained demand for the products of the State's fruit and fruit processing industries.

Population growth coupled with rising incomes and the likelihood of continued heavy supplies of feedstuffs, for the next few years at least, indicate the likelihood of continued expansion in the livestock industries of the State.

Preliminary estimates for 1959, indicate that California adjusted net farm income is likely to be slightly below the 1958 level.

In summary then, agricultural prices and total net incomes from California have not been depressed quite the same extent as the national average, but, nevertheless, have fallen behind relative to the general level of prices in the economy as a whole.

AGRICULTURAL CHEMICALS

I. PESTICIDES

Allen B. Lemmon, Chief, Division of Plant Industry, California Department of Agriculture presented the following report on the laws governing sale and use of pesticides, including "Compound 1080," at the Davis hearing:

At some of your previous hearings held statewide, testimony presented pertaining to pesticides indicated that some of the witnesses may not be fully informed with regard to the laws governing sale and use of pesticides, including Compound 1080. It is my purpose briefly to review these laws so that all may be fully informed.

Before discussing the legal provisions, perhaps we should be reminded that Americans are inclined to take for granted that their natural resources, good health, and wholesome food are a part of their heritage. Little note is given to the constant battle taking place in the protection of food and other resources and the protection of health from opposing natural forces, namely, pests. Pesticides are the important weapons used against insects, diseases, nematodes, weeds, and rodents in this struggle.

Scientists have recognized the importance of pesticides and have reported their conclusions. One such report was made in 1956, by the Pesticide Subcommittee of the Food Protection Committee of the National Academy of Science, National Research Council, which includes the following statement. "No one knows exactly what would happen if the use of pesticidal chemicals on the farm should be abandoned, but it is safe to say that we would not commercially produce, apples, peaches, potatoes, citrus, and tomatoes, to mention only a few crops, and yields of many others would be drastically reduced. It seems evident that the American people cannot be fed adequately unless crops and livestock are protected from insects and other pests." It is sometimes difficult to realize that our forefathers suffered from famine and that many deaths were caused by pests in those early days. The bubonic plague in Europe and the great potato famine are notable examples, the former carried by fleas from rats, the latter attributed to a fungus called "late blight." Much of the world still stands helplessly by while insects, insect-borne diseases of man and animals, plant diseases, and other pests destroy their food supplies and threaten their health.

Despite the tremendous advances that have been made in pest control in the United States, pests still destroy much that man wants and needs. Some annual estimates of their destructiveness are as follows:

Insects—12 percent of total agricultural output

14 billion board feet of sawtimber, or enough lumber to build 1½ million houses.

Weeds—\$4 billion.

Plant diseases—\$3 billion.

Rats and rodents—between \$1 and \$2 billion

It should be remembered that pesticides are never popular with farmers and others who must make the decision whether or not to use them to protect their crops or their livestock. Even though these chemicals usually give reliable control of pests when and where needed, there is always a hope that a better, less expensive way will be found.

Now, with this background of the importance of pesticides in our economy, let us take a look at the laws that govern their sale and use. Each pesticide, before it may be offered for sale in California, must be registered by the State Department of Agriculture. Registration is not a perfunctory matter, but the label is carefully scrutinized to be certain that it carries adequate directions for use, including pests to be controlled and the dosages to be applied, any necessary warnings or precautions to prevent injury, and the skull and crossbones and the word "poison" if it is highly toxic, a proper statement of ingredients, and the name and address of the registrant. At the present time about 14,000 different pesticides are registered for sale in the State of California. Many of these are of exactly the same composition but registered by different companies.

There are no specific data with regard to the total quantity of pesticides sold or used in California, but it has been estimated that the annual sales amount to perhaps \$100,000,000. Almost all crop acreage is treated with pesticides, and some crops receive multiple treatments. A large part of this acreage is treated by commercial pest control operators rather than the farmer doing his own work.

There are about 1,400 agricultural pest control operators licensed to engage in the application of pesticides in agriculture for hire in California. Of this number, 220 use aircraft in their business. Each firm is required by law to secure a license from the Department of Agriculture, and each pilot must pass an examination to demonstrate his knowledge of pest control and the nature and effect of the pesticides commonly applied by aircraft.

The regulations require agricultural pest control operators to apply pesticides only for the purposes for which registered. Regulations also provide that pesticides must be applied in such a manner as to prevent injury to humans, animals, or crops. The laws and regulations pertaining to the agricultural pest control business are enforced by the county agricultural commissioners, under the direction and supervision of the State Department of Agriculture.

In 1949, the Legislature amended the Agricultural Code to authorize the director, after investigation and hearing, to adopt rules and regulations governing the application in pest control or other agricultural operations of any materials which he finds and determines to be injurious to persons, animals, or crops other

than the pest or vegetation which it is intended to destroy. Authority is also provided to require that such materials be used only under permit from a county agricultural commissioner. Comprehensive regulations have been developed under these provisions which appear in Article 4 (commencing at Section 1080) of Chapter 7, Division 5, of the Agricultural Code. So far, 17 pesticides have been listed under the classification of injurious herbicides or injurious materials, and can be used in California only under permit from the county agricultural commissioner. These materials are:

Injurious Herbicides

- 1 2,4-dichlorophenoxyacetic acid (2,4-D)
- 2 2,4,5-trichlorophenoxyacetic acid (2,4,5-T)
- 3 2-methyl-4-chlorophenoxyacetic acid (MCP)
- 4 2,4-dichlorophenoxypropionic acid (2,4-DP)
- 5 2,4,5-trichlorophenoxypropionic acid (Silvex)

Arsenical Dusts

- 1 Calcium arsenate
- 2 Standard lead arsenate
- 3 Copper acetoarsenite (Paris Green)

Organic Phosphorus Compounds

- 1 Tetraethyl pyrophosphate (TEPP)
- 2 O,O-Diethyl O-para-nitrophenyl thiophosphate (parathion)
- 3 O,O-Dimethyl O-para-nitrophenyl thiophosphate (methyl parathion)
- 4 O-Ethyl O-para-nitrophenyl thionobenzenephosphonate (EPN)
- 5 Octamethyl pyrophosphoramidate (OMPA)
- 6 O,O-Diethyl O-2 (ethylmercapto)-ethyl thiophosphate (demon) (Systex)
- 7 2-Carbonethoxy-1-methylvinyl dimethyl phosphate (Phosdrin)
- 8 O,O-Diethyl S-(ethylthiomethyl) phosphorodithioate (Thimet)

Section 1080.3 of the Agricultural Code provides that it is illegal to sell or deliver any of these injurious herbicides or injurious materials that require a permit to anyone who does not hold a valid permit, so there is complete control in so far as these materials are concerned.

Sodium fluoroacetate, commonly known as Compound 1080, has been placed in a special category by the Legislature through enactment of Section 1080.6, which states as follows:

1080.6 It is unlawful for any person to sell, use or possess any sodium fluoroacetate, also known as "Compound 1080," or any preparation thereof, except that, subject to rules and regulations of the director:

- (a) Federal, state, county, or municipal officers or employees, in their official capacities, or persons under the immediate supervision of such officers or employees, may possess said compound for use for pest control purposes.

- (b) Research or chemical laboratories may possess said compound for use for the purposes of such laboratories
- (c) Persons duly licensed as structural pest control operators under the provisions of Chapter 14, Division 3, Business and Professions Code, may possess said compound for use in their business.
- (d) Wholesalers or jobbers of economic poisons may possess for sale and sell said compound to any person included within the above classifications, or for export.

Under the section rules and regulations pertaining to the sale, use, and possession of sodium fluoroacetate were filed with the Secretary of State on June 9, 1954, and became effective 30 days thereafter. These regulations have been distributed to interested persons as Bureau of Chemistry Announcement No. EP-78.

You have heard testimony in your previous hearings from various agricultural commissioners and farmers with regard to the effectiveness and importance of Compound 1080 in control of rodents. You also have heard excellent testimony from Dr. Walter Howard at your meeting in Stockton.

Compound 1080 is a highly toxic material. In a way, its high toxicity to rodents may make it of less hazard, as used, to human beings because of the very small amounts necessary in order to prepare baits toxic to rodents. The National Research Council has pointed out that comparative toxicities of various chemicals and amounts used in baits suggest that 1080 may actually be safer for field use. It is our understanding that, as prepared, it would take more than a pound of 1080-treated grain to kill an adult man. We have never heard of a human death from 1080 in California, although there have been reports of human poisonings in other states where there are not laws closely regulating the use of the material, such as is the case in California. There is considerable variation and susceptibility to Compound 1080 by various animals. For example, it is reported that the median lethal dose to a dog is in the range of 0.1 to 0.5 mg/kg, while for a monkey it is 5.0 to 7.5 mg/kg. In other words, the monkey is somewhere between 10 and 50 times as resistant as the dog.

There is one other law in the Agricultural Code that should be mentioned because of its importance in the overall program of protecting people from pesticides, and that is the Spray Residue Law, commencing at Section 1010 of the Agricultural Code. This law provides that it is unlawful to pack, ship, or sell any produce carrying spray residue in excess of the permissible tolerances established by the director in accordance with the provisions of the article. For many years tolerances have been established in the law for lead, arsenic, fluorine, and DDT. With the development of the many new chemicals, the United States Food and Drug Administration has established tolerances for residues that may remain on produce after use of these pesticides. The State Department of Agriculture has proposed adoption of the same tolerances as these established by the United States Food and Drug Administration.

II. RODENTICIDES

Dr Walter Howard, Specialist, University of California, Davis, spoke at the Stockton hearing, giving an outline of the use of "1080" in agricultural pest control operations.

Compound 1080 (sodium monofluoroacetate) is essentially odorless and tasteless and it is a water-soluble organic salt. Even though it is dangerous to man, strychnine is about three times as deadly to man than is 1080. For a fatal dose, a human would have to eat about 20 times as much 1080 bait as bait prepared with strychnine, or several hundred times as much 1080 bait as bait prepared with arsenic trioxide. These figures will vary some depending on the species of rodent being controlled. As to poison meat for coyote control east of the Sierra, no other effective poison would make the prepared bait as safe to man as 1080 does. New Zealand has shown that if a sheep consumed 10 times its lethal dose of 1080, a man would still have to eat about 197 pounds of this meat, at one meal, to commit suicide.

Compound 1080 is highly selective for most kinds of rodents and coyotes (also dogs), that is, very little poison is required, hence a weaker dose is used in these baits than if other poisons were used. Much like thallium sulphate, 1080 does not have a good antidote and it can produce secondary poisoning of dogs, coyotes, and some other fur bearers. It has an advantage over arsenic and phosphorus in that it is not a cumulative poison, and over phosphorus and cyanide in that it does not give off poisonous fumes.

A lot of unnecessary fear develops about 1080 and other rodenticides when people read how small the lethal dose is or that one material is many times as toxic as another one. On this basis some of the anticoagulants (Diphacin, Fumarin, Pival, P.M.P., and Warfarin—our safest rodenticides) would be considered more dangerous than 1080. Some anticoagulant baits require only 0.005 to 0.025 percent anticoagulant, whereas at least 0.05 percent 1080 is required for ground squirrels. The real point is how toxic and hazardous are the baits after they are prepared and how selective are they for the species in question.

When a highly effective poison like 1080 is used to control ground squirrels, treatment about every third year is usually sufficient instead of annual treatment. Since 1080 is so much slower in taking effect (1 to 2 hours or more) than strychnine (minutes), far less bait is needed. The reason for this is that strychnine baits must be put out thickly enough to ensure that each squirrel finds enough bait within a few minutes to obtain a lethal dose. Otherwise the animals would only be made sick, and then they would become shy of that bait. Consequently, when 1080 is used in field rodent control, less bait is used, it is put out less frequently, and each bait by itself is less hazardous to most other animals (but not dogs and coyotes).

How humane is 1080? Even though these artificial deaths may be more humane than the unthinking cruelty of nature in the natural deaths these animals are doomed to experience if not controlled, and even though they do not have a nervous system suffi-

ciently developed to experience pain as man does, how does 1080 compare with other materials? Experiments indicate that 1080 affects the heart in some, the central nervous system in others, and both in still others. The symptoms recorded in three detailed human cases include a tingling sensation in mucous membranes that have been in contact with the compound, numbness of the entire face in one case, salivation, spasmodic contraction of voluntary muscles, extreme lethargy, loss of speech, unconsciousness, then epileptiform convulsions. No painful effects are recorded. Except for the questionable behavior of some dogs, 1080 is clearly one of the most humane rodenticides. But dogs exhibit distressing symptoms. They become extremely excited, frequently howl, and exhibit running fits, but only an electroencephalograph test will indicate whether the dog is conscious of the symptoms.

Secondary poisoning of dogs from rodents controlled with 1080 can happen, because they are more susceptible to 1080 than other animals. It rarely, if ever, happens with bird dogs, but may occur with underfed bear hounds or stock dogs running loose. Dogs that are household pets should not be allowed to feed on carcasses of poisoned squirrels. This secondary poisoning occurs when a dog or coyote eats a rodent which has consumed many times its lethal dosage of 1080 before it died. Before dying of secondary poisoning from 1080 a 50-pound dog (LD 0.1 mg/kg or for 50 percent mortality 0.06 mg/kg) would have to consume at least 7 or 8 California ground squirrels (0.35 mg/kg for 100 percent mortality) or at least 100 Texas *Brevicaps* pocket gophers (0.05 mg/kg for 100 percent mortality), if the rodents contained little more than their minimal lethal dose of 1080.

Compound 1080 has probably become so controversial because those who know it and use it have not kept the public informed. About all the layman can find to read on the subject is written by those who are opposed to any killing for religious or other reasons, those who want to protect predators in certain desert areas, hound dog associations that have an unwarranted fear of the product, or by others who do not understand the problems. Everyone is entitled to his beliefs, but let's have facts made available for all to look at. Even though 1080 has probably been studied more than any other rodenticide, the information is not generally available.

There is no question that California has very stringent controls on the use of toxic substances to protect other forms of wildlife and the official agencies have done an exceptionally fine job in keeping accidents and mistakes to a minimum. Nevertheless, it does seem advisable that a means be created in California where any controversial pest control operation can be brought before an unbiased advisory committee for study. Such a committee was established in 1933 (Senate Concurrent Resolution No. 26, Chapter 96, Statutes of 1933), but it has not been active for some time. It was called "Wildlife Administration and Pest Control Relations Committee." This or a similar committee, if reactivated, would then guarantee that all agricultural, conservation, sporting and recreational interests were properly balanced.

I said there was no good antidote for 1080. There are materials, but we would like to say not in the sense that if you have had a good lethal dose chances that you could be saved are rather slim. Antidote is a term that also applies to false security. In other words, strychnine is the Australians, the New Zealanders, the British, consider strychnine far more hazardous than 1080. Strychnine is the killer of poisoning relatives, etc. in commonwealth countries. Antidotes won't help if you have enough of it. It's a very quick-acting poison.

... We only have one real good piece of research evidence on relations between squirrels and coyotes. This was done at the San Joaquin Experimental Range in Madera County. I came in at the tail end of the study. For your information, coyotes were studied before any control was done, one-third of their diet consisted of ground squirrels. It looked very good for the coyotes. They studied the ground squirrels they found the coyote took only 7 percent of the annual increase of ground squirrels. Negligible. The rattlesnake was five times more important than the coyote in affecting ground squirrel numbers. But none of them control, they feed on them. Prey determines the density of predators, not the reverse. Badly misunderstood.

Because of the increasing efficiency of agricultural pesticides it is necessary to carefully consider the ecological factors involved before these compounds are applied, to make sure, in the end, that they do more good than harm as far as all values are concerned. Each use of these toxic materials is a calculated risk, and unfortunately some mistakes have been made, especially in the East where native meadows, woods, and running streams adjoin treated areas. In the West the paucity of native vegetation in agricultural areas reduces this hazard, but, nevertheless, since California uses more pesticide than do Eastern states, extreme care is needed.

California has had few mistakes with chemicals in the control of rodents and predators, and very few against 1080, largely because of the stringent safeguards that have been established. For example, 1080 is not used for predator control anywhere west of the Sierra and only certain authorized people are allowed to use 1080 in California (Section 1080.6 of the Agricultural Code).

Then why has 1080 become so highly controversial that it rouses such strong emotions with some people believing that it is an uncontrollable control? Whence comes this fear propaganda? Are most people merely repeating what they have heard without real knowledge on the material or its uses in rodent and predator control? It must be so, for the misunderstandings about 1080 are extreme. Also, almost nothing but "alarm" has been written about 1080 to keep the public informed about its true role, both good and bad.

At the Davis Meeting, Dr. Howard furthered his comments.

I have had a lot of correspondence from people that are opposed to 1080 and a lot of personal contact with people. And I have analyzed most of this confusion about 1080 in just a few

brief points One that seems to come first to people that are opposed to 1080 and I really analyzed it with them They think there is no need for control of rodents and coyotes They are not really concerned with 1080 It's a tool that they cannot control But anyway, that's what it has boiled down to

. . . The other point that they frequently raise is that, the dosages that are used well, they generalize . . . and if I can pin it down to any one property or any one area, then there is no problem. But they just . . . well, I call it delusion of pesticides in general There is a trend now, naturally, to be antipesticides and some of the laymen who don't have anything to read to the contrary who pick that up and follow it

Another point is that frequently comes up from this same question is they say, well, now if you poison the coyotes, you are upsetting the balance of nature My comment to them is . . . this balance of nature what do they mean by the balance of nature? Is it sharing our apples with the moths and our lawns with moles? Now, I mean they haven't thought it through When I analyze it I make man as a part of nature. It can only be primeval if man has excluded himself . . . which he rarely does Man is part of the environment and he has learned to use this dynamic state of a disturbed environment to his advantage He tries to use this upset balance of nature to his advantage He has to—that's our whole way of life That's why we try to improve on all our crops and everything But once you begin to improve, you change the habitat Thus is the condition the animal lives in, and that is what determines whether or not you will have a pest. If you make the habitat suitable, certain of these animals then will become pests—no different from the insects, etc to other crops The habitat determines the pest and the pest then determines the predator. The predator prey thing is so misunderstood I shouldn't do it in such a short time without being able to qualify this, but I'll make the statement that most of our range conditions in California, I firmly believe, that if you could wave a magic wand and remove the predators all the predators of rodents you would then end up usually with fewer rodents than you had before I don't recommend that as a means of control It's an academic point because the difference would not be that great Evolution has seen to it that predators of prey have evolved to live together—they both need each other for optimum densities

Support of Compound 1080

A Agricultural commissioners throughout the State asserted that sodium fluoroacetate (Compound 1080) was the most effective and economic method of rodent control Seldon Morley of Bakersfield, testified and also submitted instructions to rodent control crews

Sodium fluoroacetate, or "1080" as it is commonly called has been used with exceptionally good results for rodent control in Kern County for many years Kern County is one of the major agricultural counties in the State, ranking third place in 1958, with a gross income of 232 million dollars

The common grey ground squirrel has proved to be one of agriculture's most serious pests by destroying grain, fruit, vegetables and range feed. It also digs holes in ditch banks and reservoirs and harbors diseases transmissible to man, such as bubonic plague which has been known to occur in Kern County. In order to prevent the possibility of an outbreak of this disease the Agricultural Commissioner is charged with the responsibility of adequately controlling ground squirrels, not only in our range and cultivated crop areas, but also in picnic and camping areas such as Kern River Canyon, Isabella Lake, Frazier Park and Hart Memorial Park.

Two hundred ground squirrels on one section of land will destroy enough food to feed a full-grown steer or five sheep for one year. As a direct result of the use of 1080 poisoned bait the ground squirrel population has been gradually reduced until at the present time there are less squirrels in Kern County than in any previous year. The amount of poison used is thus reduced in the same ratio. In 1948, we treated 515,546 acres with 49,003 pounds of grain. In 1953, we treated 391,519 acres with 42,016 pounds of grain, and in 1958, a total of 399,774 acres were treated with 29,239 pounds of grain. In effect, this means greater protection is being achieved at a substantial savings to taxpayers.

1080 materials are used in Kern County only under supervision of agricultural inspectors in accordance with Section 1080.6 of the Agricultural Code. The material is delivered each morning and placed under lock and key each evening. The inspector personally works with the poison crew. The amount of bait exposed to wildlife is minimum under this program as compared to use of strychnine or other poison baits. 1080 materials are never allowed to be used by unauthorized personnel.

The Fish and Game Protective Association and game wardens are in full accord with the rodent control program for the wildlife balance has not been unduly disturbed. This has been proven by the fact that predatory animals such as coyotes are still with us in spite of the fact that the County of Kern has two trappers on the job the year-round, and the Fish and Wildlife Service also has two trappers located in Kern County under a co-operative agreement, all working on a full-time basis in the county to protect sheep, poultry and cattle from heavy loss.

Some time ago, the Fish and Game Protective Association reported that ground squirrels were causing severe loss of quail eggs in the Kernville area and appealed for assistance in a control program. The results were very good and quail were plentiful in the area that season. This type of program indicates that supervised use of 1080 is a means of protecting natural wildlife rather than a cause of depletion.

The County of Santa Barbara, Department of Agriculture, gave an outline of their particular rodent problems.

Ground squirrels were the most important rodent pest of agriculture in California for nearly 150 years. They are extensive feeders of seeds for forage crops as well as many vegetable, fruit

and nut crops. It has been determined that 200 squirrels will consume as much feed as one steer. Production of grain in many fields has been reduced by as much as 25 percent by the feeding of ground squirrels. In addition to destruction of food crops, they act as a reservoir of several serious diseases which are transmissible to humans such as bubonic plague, tularemia, rabies, etc. Their extensive system of burrows in the ground are important factors in soil erosion of our valuable agricultural land.

In 1917, systematic control of these important pests to agriculture was inaugurated in Santa Barbara County. The Board of Supervisors, County of Santa Barbara, enacted County Ordinance No. 422 in 1927, which in substance stated that any premise in the county infested with ground squirrels was a public nuisance and placed upon the Agricultural Commissioner the responsibility to control said ground squirrels at county expense. At that time, the only toxic materials available were strychnine and phosphorus compounds. Very little progress was obtained in their control until the advent of thallium sulphate and later sodium fluoroacetate. During World War II, sodium fluoroacetate or "1080" as it is now known, was developed and recommended by the United States Fish and Wildlife Service as a rodenticide. This material has proven to be more effective in the control of ground squirrels than any material previously used. Realizing the toxicity of this material, legislation was enacted which imposed restrictions on the possession and use of this material.

In our operations in Santa Barbara County there has been full compliance with Section 1080 b of the Agricultural Code and with the regulations issued by the Director of Agriculture. All squirrel control in Santa Barbara County with "1080" is done entirely by employees of the Department of Agriculture under constant supervision and direction.

Efficiency in our squirrel control program with the use of "1080" can be graphically shown by the following figures. In 1927, there were applied 168 tons of poison bait in Santa Barbara County on approximately 600,000 acres. For the past five years we have used an average of two tons of bait to cover the same territory. In 1958, the same acreage was treated with 2,638 pounds of "1080" bait or a little over one ton. We feel that the continued usage of "1080" is very important to maintaining the low population of ground squirrels now in Santa Barbara County and it is our estimation that in the future less than one ton of "1080" bait will be used in our ground squirrel control program.

If this material is not available to governmental agencies, it will be necessary to go back to some of the old materials used at the beginning of the program and which were found to be very inefficient. Should this happen, the ground squirrel population would, in a short period of time, revert back to what it was 20 years ago.

We feel very strongly that the present restrictions now imposed by law on the possession, use and handling of "1080" are sufficient and have prevented any undue hazards to wildlife, other animals

or humans "1080" is a necessary tool in the agricultural economy of Santa Barbara¹

Harry Bronson, Deputy Agricultural Commissioner of Ventura County, reiterated

I will say that 1080, because it's tasteless and odorless and has other desirable characteristics, is probably at the present time the best poison that we have available for rodent control. Now in addition to its importance in controlling squirrels, as far as agricultural losses are concerned, we can't overlook the fact that bubonic plague is endemic in most of California. Sad, but true, it is. For that reason squirrel control is doubly important. I point out that in 1958, we used about 5,000 pounds of 1080-treated grain, 1957 around 5,000, 1955 about 8,000. Now that's a considerable amount of material and it shows how important we feel it is because we use that much of it.

We always post the property at prominent places of entrance or egress, or any other place that will be noticeable. The question was asked previously here what happens to the squirrels. Well, it's been our experience they don't always go into the burrow to die, sometimes they die on the surface, and that is the reason that the secondary poisoning is sometimes so important.

Now, just to close it then, I can say that the problem of controlling ground squirrels is serious to the stockman, the grain grower, the fruit grower, to agriculture in general, and it's an important thing in holding the squirrel population down, which, in turn, reduces any possibility of bubonic plague becoming a serious factor.

At Stockton, George Stitt of the county agricultural commissioner's office explained use and procedures of Compound 1080 in San Joaquin County.

As has been stated 1080 is regulated, the use of 1080 is regulated by state law. Also rules and regulations of the Director of Agriculture as to procedures which must be followed in that usage. In this county, we endeavor to follow these regulations as closely as we can. We have men working for our office who apply the 1080 baits in rodent control, mainly ground squirrel usage. Before any poison bait is placed upon a property, the farmer must give his consent to the use of that material on his ranch. Then the material, the bait, is applied by our men who have been trained in the usage of the material. This is done under the supervision of an inspector who has been certified by the State as being qualified to work in rodent control work. After the application of the baits, about two, sometimes three days later inspection of the property is made by the inspector. Any dead squirrels which he finds on top of the ground are put down in the holes, any exposed bait which may be left remaining is covered up.

We have used 1080 ever since its introduction, and at the present time we have not had one valid complaint or any injuries due to the use of this material. We can see it a very excellent

¹ Walter S. Cummings, Santa Barbara Meeting, October 26, 1959

material for rodent control work. We would like to continue using it. You have to be careful where it is used. We never allow any 1080 to be placed in populated areas, heavily populated areas—say around town or even in the suburbs where you may have a little—some small ranches of one-half acre, acre, quite a population in an area. Wherever we use the material it is used out on the larger acreages, and even there we stay away from the house and barn and buildings.

It is used just about all over the county as far as area is concerned. The biggest percentage of it would be used in the area on the west side, all the way down from Thornton clear down into Tracy. Control is, I would say, all the way from 80 percent to 100 percent. It just depends on—truly effective, very effective. Some places we have 100 percent eradication. We do not recommend 1080 as an eradication material. Where large populations of ground squirrels exist we use 1080 to thin the population down. Then for eradication we recommend following up with a gas—carbon bisulphite—treating the individual holes which may

At River-side the Agricultural Commissioner for San Bernardino County spoke of regulated use of 1080.

Now, briefly in support of regulated use of 1080. I think that we can agree that materials such as sodium fluoroacetate should be permitted use only under careful regulation and supervision. Such is the intent of our present law and regulations authorized thereby. I would refer to the Agricultural Code, Section 1080.6 and also the California Administrative Code, Sections 2470 to 2472 inclusive.

Now should it be considered that even more caution is necessary in the use of Compound 1080 as a rodenticide, it would be my suggestion that such matter be approached *not by change of state law*, but rather by tightening of regulations authorized by state law. When it is considered that commensal and field rodents cause losses to our country to the tune of from one to two billion dollars annually, and in California about several million dollars annually, it is imperative that we have a material available to us that will do an effective job when other materials of more common use fail.

1080-treated grain is colored with yellow dye to be identified as such and as a deterrent for birds. When applied in field use, individual baitings are of a minimum size and all placed with long-handled spoons well down in the rodent burrow. 1080 is used only under direct supervision and by responsible personnel of our department.

This treated bait is taken to the field by our men and any amount not used during the day is picked up by our men. All poisoned bait materials are carefully packaged and labeled and stored under lock and key. Work done is checked shortly after for favorable or unfavorable results. Now in rodent control, as in other pest control, we look and hope for assistance for predators. When such natural help is not forthcoming, ranchers request assistance particularly when strychnine-treated grain—which is available to

them without restriction—is not sufficiently effective. There are real emergencies from time to time in our county, and it is our experience that we need a rodenticide available to us such as Compound 1080, much more effective than the other materials available to us such as strychnine or zinc phosphide.¹

He asserted that there are adequate safeguards in the use of 1080 as the law is written, when properly administered.

At the Salinas hearing, Ward Saunders, San Benito County Agricultural Commissioner, stated:

I would like to point out that in regard to the hazard to wildlife, the board of supervisors the first of July hired a trapper to reduce the number of coyotes that were annoying the sheep and the cattlemen. So in that regard, at least, it has not been a completely destructive agent insofar as the coyotes are concerned.

Albert W. Culver, of the Monterey County Commissioner's office, testified:

We, in Monterey County Agricultural Commissioner's office, feel that with "1080" we have a material that is doing a good job at a reasonable cost. Many cattlemen insist on the use of "1080" because it is doing a good job for them with no known ill effects. Today, in agriculture, we are using many new and hazardous materials to protect our crops and lands. Properly handled, these materials have been a great help in controlling insects, weeds, etc. We feel that "1080" has proven itself as an important and necessary material and that its use should be continued.

A cattleman near Hollister whose ranch consists of 15,000 acres, stated that he has never known to have a dog lost from "1080."

John DeGay, rancher in the Upper Carmel Valley and Jamesburg area testified:

I would like to add that in regard to the coyote situation in our particular area, the Fish and Game conducted a very intensive trapping campaign before we were there and we don't have the coyotes—once in a very great while you see a coyote so I don't know whether the coyotes would pick up—I suppose they would, but we have never found any carcasses anywhere at all. And in regard to the birds, we have some quail—not many—but I have never seen any quail and we poison in where these little chipmunks are and they don't take it. That's a peculiar thing. I think that perhaps they would—they don't take this 1080 at all—you can kill the squirrels right out and the chipmunks will still be there.

At the Bakersfield meeting, a number of ranchers, representatives from the Kern County Farm Bureau, Fish and Game Association and the Kern Branch of the California Cattlemen's Association spoke of the need for the continued use of Compound 1080, under the rules and regulations set forth by the county.

¹ Harold Crane, Riverside Hearing, November 27, 1959.

Carl F Twisselman, Vice President of the California Cattlemen's Association and Chairman of the Association's Range Improvement Committee.

It took years to get a control program operated through the Department of Agriculture. Our range lies on both sides of the San Luis Obispo-Kern county lines, and we have worked with both counties.

The statement is often made that these programs are detrimental to wildlife and game. There is no one who has more interest in beneficial wildlife than those in the back country who are protecting and raising this wildlife. Raising and protecting beneficial wildlife costs the ranchers a lot of money, and if it were not for their natural interest and knowledge of wildlife it would be pretty scarce today.

1080 is the only poison we have available that will control rodents. The strict regulation under which it is handled works a hardship on the ranchers, but other poisons have become ineffective and we have no choice.

Also, at the Bakersfield meeting, Charles Dick, Deputy Director of the California Department of Agriculture, testified that

Years ago we had some controversy or differences of opinion with respect to the use of phosphorus when it first came out as a rodenticide. Then the next one was strychnine and we had some differences of opinion on it. So when we got to thallium sulphate as a rodenticide, the Department of Agriculture, specifically asked the Legislature to enact a law to restrict the use of thallium to the official agencies. Then when Compound 1080 hit the market we did the same thing, and that is the reason why Compound 1080 can only be used now by the official agencies.

A rancher from Chino spoke of his experience on his 3,000-acre area.

Most of it is pasture land in the West Chino foothills. For the past 15 years we have had an increasing problem of squirrels and small rodents, principally squirrels. Until, I believe it was three years ago, but I think we used 1080 in 1957, and in 1958, with what I would say almost perfect results. Of course, the squirrels move in from surrounding areas that have not seen fit to spend the money and try and clean up their problem. This year they moved in heavier than any time since I have been in the Chino area. And it just seemed like the ground almost moved there were so many of them.

And I asked the commissioner's office for help on it and they were short on help, but recommended that I put out strychnine-treated grain. Which I did twice. Instead of diminishing the population, it just seemed to encourage them to work towards increasing, and I finally in desperation told them that I just had to have some relief—it was becoming impossible.

. But if there was any secondary effects or harmful effects to any other animals I think it would have shown up in the cat population¹

President of the San Luis Obispo County Farm Bureau felt that Compound 1080 should be continued for the control of ground squirrels in the area. With a well-regulated program, the county commissioner was preparing, handling and distributing the poison under strict supervision.

Thomas Chalmer, San Luis Obispo Agricultural Commissioner, submitted information on the rodent problems the county has had in the past.

San Luis Obispo County is an extremely favorable habitat for the California ground squirrel and at the time of instituting the present program of control, it was estimated that at least 10 percent of the crops of this area were being destroyed by these rodents. On the basis of a total valuation of \$11,975,900 for 1928, approximately \$1,000,000 worth of crops were destroyed by ground squirrels each year.

The situation was extremely bad as there was very little systemized control work. Poisons of various kinds were used by farmers with little success. Some of the bait—in the light of present-day knowledge and practice—being of astonishingly high strength. In addition, it was established in the minds of farmers that adequate control was not possible unless there were several consecutive applications of a bait material during a year. As a result of this policy, staggering amounts of bait material were applied during the period immediately preceding the start of the present program.

To correct this situation, meetings were held throughout the county to advise farmers concerning the problem created by frequent, untimely applications. The result of this educational program, which has been continued throughout the years, is a great reduction in the amount of bait material required in this work.

At the present time a minimum amount of bait material is required biennially and almost all under supervision of this department. In addition to close supervision of the work before, during, and after application, treatments are now timed for the period of year best suited for maximum results. At the present time in San Luis Obispo County, grain treated with sodium fluoroacetate is applied only once during the two-year period over a very great part of this area. In other words, farmers are completely in accord with the present program of control in which exposed bait is so timed that more than 90 percent is consumed within a 48-hour period. This practice of exposing baits for a short period only once during a two-year period, or only when it is required, has eliminated the secondary danger to other animals.

Since dogs are attracted to dead rodents, a risk does exist relative to these animals from 1080 poison. However, the supervised program of control and a warning to farmers about this danger, particularly regarding keeping dogs well fed and restricting their

¹ Paul Greening, Santa Barbara Hearing, October 26, 1959.

movements at time of the control work, has practically eliminated the danger.

John W Dixon, Agricultural Commissioner for Fresno County.

We have in the San Joaquin Valley an overabundance of ground squirrels and other rodents, which affect the growing of many crops. If these ground squirrels are not controlled, it will be impossible to grow nut crops, raisins, and could seriously hamper the growing of grain. The only method whereby we can control these is by the use of poisoned grains which are acceptable at certain times of the year. The results of the clean-up campaign in certain areas has been good. We are endeavoring to do this poisoning by block method. That is, to take a certain part of the county each year and clean the ground squirrels up thoroughly, and only coming back in case of a complaint or where the application has not proven effective. There are several poisons that are used, but the most effective and the cheapest is this sodium fluoracetate, "1080."

Over the years in Fresno County, there has been no human accident with it, no game has been hurt where "1080" has been used. There has been sometimes a question and "1080" has been blamed, but in every case, I believe, we have found that the killing of game has had some other cause. One case in particular in which "1080" was blamed for killing deer in an area north of us, the cause afterward was found to be a dry season and deer had been browsing on Mexican whorleaf milkweed. The symptoms for poison of these two are very different. A milkweed is an excitant and causes great agitation and thrashing around. The effects of "1080" has a numbing effect, and had those who reported the deer being killed known these symptoms there probably would not have been the report which was spread around.

Deer cannot get a sufficient dose because it is spread out thin, — a grain or two here and there, never put out by handfuls. I doubt if a deer even picks up a single grain. Where it is properly placed — as in Fresno — "1080" is no hazard to game or livestock or people, but is a big advantage and the cheapest method of controlling our ground squirrel problem.

The Agricultural Commissioner from Modoc County and representative of the Modoc County Board of Supervisors, submitted a resolution which was presented at the first hearing of Assembly Bill 1996 (Beaver) indicating that members of the board of supervisors urged the continued use of Compound 1080 on the grounds

that it would seriously, and without valid reason therefore, handicap and jeopardize rodent control operations necessary to protect the agricultural economy and public of the county.

At Red Bluff, the agricultural commissioner testified that

We have used "1080" in Modoc County for 13 years along with other rodenticides. It's all been used under my immediate supervision.

There have been some mistakes made, yes. Whether you classify them as misuse I don't know. . . . We've lost some dogs, yes, sir. As you have probably read in the paper we lost some geese. . . . "1080" was not entirely alone involved in that since . . . geese were also poisoned at the same time with zinc phosphide and strychnine. It was the ecological situation existing at the time that was directly responsible . . . not the material or the method of use.

. . . It could happen again, but I hardly think it will, from the knowledge we gained at the time. It is highly improbable that anything like that will happen again.

. . . If I might just make one remark that I think is very pertinent that I don't think has been brought up before. These people that are opposed to "1080," no doubt, many of them are opposed on very honest motives, but, in my opinion, they're opposed on honest motives in the attempt to protect wildlife which I can well understand, but I think that what they have achieved is directly the opposite because—I may be wrong in my opinion—but I think they have got a lot of people so badly scared that they are afraid to conduct any experimental work in this field that is badly needed by persons like myself I hope I made myself clear.¹

Dr Madeline Algee, Santa Barbara County rancher, representing members of the Crescent Farm Bureau, presented a resolution opposing the banning of Compound 1080 and a petition signed by 20 persons in the Parkfield-Bradley area who believe that the poison is not detrimental to wild game,

and is valuable in the control of rodents. The 1080 poison has been a great benefit for many years and is far less dangerous to wildlife than phosphorus which was in wide use before 1080. Also, phosphorus has the added danger of fire. It has not been our experience that game has suffered when 1080 was properly used as it has been under county supervision. This petition was signed by 20 names.

The only complaint that we have had in our area is an occasional rancher usually new to the area who has lost a dog or a cat because he did not tie the dog up and, therefore, has had a chip on his shoulder.

We have had a little difficulty in our area getting co-operation from our agricultural commissioner in our program. He has the theory that once every two or three years is better than every year, and we have a very heavy population of squirrels. We haven't been adequately poisoned for quite a few years because we haven't had co-operation from him, but I think he is going to co-operate, or else.

We find that 1080 is a very effective poison. . . . People pay for the poison and the county supervises.

Paul Jennings, president of the East Highlands Orange Company, and owner of 1,100 acres of citrus in San Bernardino County, testified.

¹ Loring White, Red Bluff Hearing, August 26, 1960

Two years ago this coming spring—almost overnight—out of the brush that surrounds our orchard we were deluged by a lot of field mice. Before we knew hardly what had happened, we found that they evidently needed some moisture so they came under our trees and had begun to gnaw the bark of our trees. Now some of these trees are 40 and 45 years old—bearing six to eight boxes of fruit. We did everything we could—we used warfarin which we use all the time to protect against squirrels; we talked to Mr. Crane, and we used some strychnine on grain, on pieces of oranges and even on things like lettuce to see if we could control them, and it was just going from bad to worse. So . . . finally Mr. Crane sent one of his deputies over and reviewed the situation with us, and they came over and began to use 1080. Within 30 days after they had put this 1080 out most of the mice were gone. Now as I say, it's been about two years and, yet, right now, we are losing about 200 trees.

It seems to me, I am not saying that this 1080 is the thing we should use, but I am asking the committee, don't take that away unless we have something comparable because we have other orchards that are away from the mountains and we are not troubled with these field mice.

If Not 1080—Something Just As Good

Garret Van Horn, co-owner and operator of a 1,200-acre ranch in Gila Valley (Santa Barbara County) testified:

I wanted to speak briefly about 1080, and make just one point and that is that surely there are other poisons, and surely there are other things that perhaps the State could authorize the use of. However, I'd like to emphasize that 1080 is a very effective poison and ever since the county has used 1080 on our place we have noticed a tremendous decline in the population of squirrels, and the jackrabbits don't seem to be as numerous as they were when the coyotes were there, and I just would like to say that when we have something good there always seems to be a group of people getting together to try and get rid of it. That's fine, I'm all in favor of change if you can get something better, but we have something now that has worked successfully here in this area.

A Change in Wordage

Virgil Strong, Gulf Pest Control General Manager and Entomologist, formerly with the State Pest Control Association, testified at Fresno:

It seems that every few years this subject comes up again and we rehash and fight the same thing over and over again. My only concern is that people serving under structural pest control and under agricultural pest control licenses serve under dual licenses and comply with the same regulations. I have a suggestion, it was always my concern, we use not as much 1080 as we used to, we have a different outlook on it. We are after the vector of bubonic plague on squirrels and on rats and mice. 1080 is used in water, it is used sometimes in canned tuna placed out along the wharves for wharf rats or the waterway rats and most commonly it is placed in water.

And Assembly Bill 1996, line 13, which gives the exemption to structural pest control people, you might be interested in knowing that you give here the exemption to structural pest control people, but in the Structural Pest Control Act, it says that we must abide by the laws and regulations of the Bureau of Chemistry concerned with 1080. I would like to see the additional wordage here that in the absence of more stringent law under this exemption that the laws pertaining to agricultural pest control shall prevail. There has been a twilight zone there between the two industries.

I think that whichever laws, when it concerns structural pest control, we are licensed under both, we do both. We have 28 offices throughout California and Arizona and in our agricultural work we must be licensed and report to the various agricultural commissioners. Then it comes to the concern while I am here, this will tie in very quickly with Assembly Bill 2513, Article 17 or disciplinary procedures, Subsection 160.43. And I am quite concerned about this and always have been. "In all accusations against licensees shall be filed within 90 days after the act or omission alleged as the ground for disciplinary action." If I were under the Agricultural Code, if I were operating and I killed a dog and it happened to be 120 days before they finally proved that perhaps it was the 1080, I feel that the 90 days is not long enough, and in this day and age herbicides being used along with residual compounds being used, I feel also there that the 90 days certainly is not enough.

1080 is a terrific tool and misused can be a terrible thing. I don't care what regulations we abide by, but we all want to abide by the same regulations. The more stringent it is, as far as I am concerned, the better operations we will have, and we will not lose the use of this tool.

1080 is in a class by itself, and in our operations we do not resort to 1080 unless it is the last straw. First of all, in the technique has a great deal to do with the killing of any rodent, and we prefer to use other materials first, and if we have to, we would use 1080 as the last resort. Of course, we are dealing primarily with household, commercial establishments.

Opposition to Compound 1080

B. Dr. H. M. Weber of Indio, representing the Desert Protective Council, which is made up of a good many hundred members and which collaborates with organizations totaling a good many thousands, spoke at the Riverside Meeting, as a doctor of medicine and human conservationist.

First, as I said 1080 is a very effective poison. Now one of the special difficulties with the poison program generally, is that the public has not been fully informed or the public has been lulled to sleep about the dangers of many of these programs. In connection with 1080 for example, the latest bulletin which the manufacturers published is Technical Bulletin Number Three. Now as an example of the tendency to belittle the dangers involved, on the title page, the Tull Chemical Company—which manufactures 1080—writes,

(they) (make) the statement that it is also very toxic to man and (they) say then that several fatal cases have been reported. Now we turn to page two—of the same bulletin—and here we find where the efficient Wildlife Service of the Department of the Interior reports that 16 deaths have been reported to date, which is a very, very incomplete record according to the American Medical Association which claims—in a letter to me—that probably the deaths are far above 16. But the point I want to make is that the Tull Chemical Company calls it several deaths and this report to date says 16.

I should have also stated that the information on this particular compound is very incomplete. We simply don't know—we know relatively little about its effects or its potential damage which it may be doing to many of us indirectly through poisoning—the poisoning program. By that I mean, as an example, a pheasant or a turkey or a chicken has high resistance to 1080. It can eat 30 times as much of the 1080 material or kilogram of body weight as can a coyote or a rat. In other words, it is possible, therefore, now this should have been studied years ago—for a pheasant to eat enough 1080 so that in one drumstick there should be enough 1080 to kill a person—see what I mean—before the pheasant dies because of that high tolerance. Now that has not been worked out. I maintain, however, that because of the fact that this material is stored in the animal or bird that eats it as 1080 it's not changed which is another calculated risk which is very serious about 1080. When you absorb it, it does not change in its material makeup. It is still possible to poison other things which consume the thing which eats it. Which, again, as I say makes it different from other poisons.

Now, additionally, while I am on that angle of it, one of the common symptoms of 1080 is it causes vomiting. That vomitus always contains 1080 material which in turn can poison other things which eat the vomitus. That has happened many times.

Now I would like to go back to my original subject here about misrepresentation or attempts to belittle the dangers involved. The Tull Chemical Company also states (here) in their later bulletin:

The Tull Chemical Company, on page two, makes this statement—and I consider this the understatement of the year—"The selection of the best antidote for fluoroacetate poisoning is complicated by the fact that there is little evidence of the effectiveness of any measure in man."

Then there is no antidote is there? And yet, (they) begin the statement by saying that the selection of the best antidote, when it is known definitely that there is no antidote. Once you get 1080 inside of you that's the end of you. That is a medical fact that there is no argument about. Now another point. How poisonous is 1080. The list of deaths from 1080—as sent to me by the American Medical Association—shows that six of the 16 reported were in children who had merely chewed the empty paper cup which had contained the 1080 solution. Now that indicates that is a pretty violent poison and that is exactly what it is. 1080, in fact, is such a magnificent poison that we think that it should never be

outside of the chemical laboratory, particularly inasmuch as there are other compounds that you could use. Now you have heard statements here about the effectiveness of 1080. But many of us maintain, and I think reasonably so, that 1080 actually defeats the purpose for which you originally use it.

Now I have a letter (here) from the agriculture commissioner of Modoc County which was written at the time of the large waterfowl poisoning in the counties up north in California and in south Oregon, and he makes this statement that, "We have used 1080 for both microtus and citellus—those are two forms of field mice—in this county for 10 years without any previous trouble, but never before has this countryside been so completely denuded of crop residues and other game bird food as in this present mouse infestation." It was reported, Mr. Chairman, as you probably read, that there were as many as 10,000 field mice to the acre at that time. Now there is a Modoc County agricultural commissioner reports that after the use of 1080 for 10 years they have diversified infestation . . .

If that argument were valid, then you could say water was poison because you can drink too much water and kill yourself. This is not valid. I am speaking of a specific substance (here) which is so poisonous that once you have a symptom from the poisoning you are gone. It is so poisonous also that a small amount of it will kill you. But I think that most doctors would agree that any poison for which there is no antidote should not be outside of the chemical laboratory. Now you wanted to know the date of this letter. May 12, 1958. Again, coming back to the poison program generally, not just specifically 1080, I think you gentlemen have seen . . . Thompson Chemical Corporation, in which they report a 12-year study in connection with rice insecticides and they, themselves, have stopped the manufacture of these because they are defeating the purpose for which they are intended. I would cite for you the instance, the case of DDT where originally the public was advised that it would kill bugs, but wouldn't hurt people and, actually, today it is shown that it will not kill bugs but that probably right within this hearing here, now, there are people who may be developing cancer of the liver from the residual effect of DDT.

Substitute

There is a compound known as warfarin which was used as a rodenticide for many years which is absolutely harmless to almost every other form of animal or bird. I know of many farmers who will absolutely not permit 1080 on their place who get very, very good results with strychnine. Now, again, Mr. House, as I said 1080 is simply a wonderful poison. There is no superior to it, but I would say that if poisoning is your principal objective; that the desire is simply to kill everything, an even better method would be an atomic bomb because that would really get rid of everything. But we must be reasonable and rational, and, again 1080 is a cheap poison; it is a powerful poison; it is an effective poison, but I am absolutely convinced it is defeating the purpose for which it is intended.

Now strychnine is distinctive in its taste, in that, say it is also very definitely subject to the treatment of antidotes that you can use once you get strychnine poisoning. Many people who are poisoned by strychnine recover from it because of the antidotes that are usable. Again, I don't believe that strychnine will last in the animals or other birds when strychnine has been taken in the body—it changes. The very diabolical characteristic of 1080 is the fact that it does not change in your body. Anything that eats 1080 and lays there will poison the next thing that eats it. There is absolutely no end to the things which 1080 can kill in a chain reaction. Because, as I say, it does not change its formation, it does not oxidize and that of course, is one of the reasons why there is no antidote for it—you can't change it. It's simply—with all of the good characteristics it has, and all the good work it does—too dangerous for people.

And so far as people controlling it is concerned, it has been proved that the very rigid controls now used do not control it. It has definitely been proved time and again, I have talked personally with pest exterminators who have license to use it, and they have pooh-poohed the danger of it to me. They have said it's the finest thing in the world. "I just fill a little paper cup with solution and put it in back of the refrigerator and the rats are gone." Sure they are gone. See what I am getting at. These people don't understand the dangers incidental to it.

I question that you can ever get sufficient control. It's like coming down to the matter of firearms, for example. Firearms are safe, people are not safe. 1080 is safe—perfectly fine, but the people that use it aren't safe.

Dr. Eric Lundroth, of San Bernardino iterated Dr. Weber's statement in his letter of May 7, 1959:

As a conservationist and medical practitioner, I feel strongly that this deadly poison should be completely banned because

- 1 As a chain reactor, it is unpredictable and uncontrollable in action
- 2 It has no known chemical or physical antidote
- 3 It is odorless and tasteless and therefore difficult to detect and to keep safely
- 4 It is a deadly poison to humans, particularly to children
- 5 It is too destructive to our dwindling wildlife, to so-called predators as well as to other mammals and birds

The American Medical Association, as well as most conservation societies, have taken a stand against this deadly poison.

Mrs. Marguerite A. Smelser, writer and member of several conservation organizations, presented a statement at Riverside:

I speak as a citizen, and in so doing I speak for that growing army of citizens who have lost faith in those government agencies that should be guarding the people's health and the people's wildlife, but in fact are largely guarding or increasing the profits of certain special interests.

God knows, drastic regulations are urgently called for to control this mad devotion to poisons used in the production and storage of our foods, and in the killing of every wild animal, including birds and insects, that some particular group believes might cut down its profits in production of another ear of corn or another bushel of wheat to add to our costly nine-billion-dollar farm surplus.

The dastardly chain-acting Compound 1080. Predators are wild animals which fulfill a beneficial role in a biotic community. In spite of this fact of ecology, the wool growers, some ranchers and agricultural so-called "experts," and government men whose jobs depend on perpetuating predator "control" departments, would have us believe that God "goofed" when he fashioned these wild animals.

As to Compound 1080, gentlemen, don't be misled by those who scream loudest that this deadly chain-acting poison is "necessary, safe and harmless to the people's wildlife." That simply isn't so. And don't be misled into thinking that those opposed to 1080 are only a "small group."

There are many thousands of us fighting chain-acting poisons such as 1080. The National Association of American Trappers want them outlawed along with the cyanide gun, the Defenders of Wildlife, numbering many thousands of members, the Desert Protective Council, Inc., Audubon branches, not a few state authorities in other states, and thousands of people outside any organization.

Author of "Uncontrollable Control," published in *Nature Magazine*, January 1959, Mrs. Smelser furthered her comments with:

Such is the current passion for poison that yearly, upon millions of American acres, federal and state agencies are spreading tons of grain and meat impregnated with the most spectacularly deadly poison known to man: Sodium Fluoroacetate.

Commonly called Compound 1080, this all-killing poison was developed by chemists during the second world war when red squill was hard to get. So extremely toxic is 1080 that minute amounts kill, and it possesses an annihilative chain action destructive to all wildlife. "Unfortunately that 1080 was ever discovered," writes a noted research biologist.

Man also is highly susceptible to this tasteless, odorless, white poison; it has caused human deaths. Taste it, breathe it, and although it may work slowly and you get the best medical aid, you are doomed. There is no known antidote.

Lester Reed, of San Jacinto, retired trapper and hunter, testified at the Riverside hearing:

Anyone who has spent the first 40 years of their life on a rancher's side of the picture knows that the ranchers are entitled to rodent and predator control on private land where damage may be done. However, these same persons should realize that it sums up to nothing less than a very serious trespass when we use any such poison as sodium fluoroacetate (Compound 1080) where there

is secondary poisoning and cause lethal bait to die within the limits of our public roads and highways, on the neighbor's property, on public lands where the interests of so many of us are involved in our water supply or within the limits of our cities or towns

"More About the Dangers and Harm of the Poison Program" was written by Mr. Reed (January, 1958), and submitted to the committee. The pamphlet indicates Mr. Reed's experience and his viewpoints on the poisons being used in the agricultural program

Also, "The Coyote's Fading Howl," written by Arnold Reider, Member of the House of Representatives, State of Montana, 1958, printed by Lester Reed, said in part

Compound 1080 is particularly toxic to the canine family. Coyotes are found anywhere from 1 to 10 miles from the station, indicating a long period of suffering. I have seen dogs that got 1080 bait and have talked to veterinarians concerning it. Death is unduly violent. Depending upon the dosage, an animal lives from 20 minutes to several weeks. They pass through a period of excitement, yelping, cowering, running as from fear, and finally a period of violent convulsion. This is repeated time and again. Some dogs have been observed to have over 50 of these cycles before succumbing. A dog or coyote need only lick a piece of impregnated meat to have enough. There is no known antidote for this poison.

It is hard to estimate what all falls victim to the 1080 stations. However, it can be assumed that everything that eats on the bait is lost. We know it includes bear, coyotes, foxes, weasel, mink, marten, badger, dogs and many birds, notably eagles and the various other carion birds. It is not a selective poison, nor can it be, because of the nature of placement and time.

Those of us who are unfortunate enough to know the workings and this insensible, unsound, and inhumane program must band together and do all we can to stop the spreading of poison on our forests and plains in the name of predator control.

The President of the San Bernardino Valley Audubon Society, submitted a letter to the committee stating:

The members of the San Bernardino Valley Audubon Society believe that no matter how carefully placed, sodium fluoroacetate (Compound 1080) is too indiscriminately destructive to wildlife to be used.

We further believe that all poisons in predator control should be prohibited, and that secondary action poisons in rodent control should be prohibited. There are less dangerous poisons which have long been successful to the farmer in control of rodents.

Qualified members of our society have given consideration to official claims from all over this State and nation to the effect that the use of Compound 1080 and other chain-acting poisons is necessary and safe when under official supervision. These claims have been found to lack substantiation.¹

¹ Mrs. Ann Wissler (Letter October 20, 1959)

Mrs Dorothy K Lynn, Secretary of the San Bernardino Valley Audubon Society, submitted a letter to the committee on March 31, 1959

. . . In discussing this dangerous, chain-action poison, for which there is no known antidote, please remember that our nation's wildlife belongs to all the people, not to special groups alone. Many independent biologists believe the so-called predators are extremely important to all of us alike, yet, the government agencies kill them wholesale with the taxpayers' money. Many ranchers and naturalists who are close observers of the relationship between "predators" and rodent-lagomorph populations, defend the predators as economically important.

Be assured that the members of this society are in sympathy with the farmer and his need for control of rodents. We have ample evidence that this can be accomplished without using a chain-acting poison such as sodium fluoroacetate.

One of her enclosures was a copy of a letter received from Dr. Bernard E. Conley, Secretary of the American Medical Association, submitting data on morbidity data on sodium fluoroacetate (1945-1958).

Proven Deaths

1	Eight months, chewed bait cup.....	1946
2	Adult, suicide	1947
3	Adult, suicide	1947
4	15 years, drank solution from soft drink bottle.....	1947
5	11 months, chewed on bait cup.....	1948
6	One year, chewed on bait cup.....	1948
7	14 years, drank solution from soft drink bottle.....	1949
8	Pest control operator.....	1949
9	Adult, suicide	1949
10	18 months, chewed soufflé cup.....	1949
11	Young adult, drank solution from soft drink bottle.....	1949
12	Two years, chewed soufflé cup.....	1949
13	Adult, drank solution from whiskey bottle.....	1955

Suspected Deaths

1	Two years, drank from soufflé cup.....	1946
2	14 months, chewed on soufflé cup.....	1946
3	Six months, route unknown.....	1946
4	20 months, ate bread presumably soaked in 1080 solution.....	1948

This data was furnished by a committee member, Justus C. Ward, Head, Pesticide Regulation Section, U.S. Department of Agriculture. Mr. Ward stated: "The records most certainly are not complete, and I am quite skeptical that any morbidity data for 1080 (sodium fluoroacetate) has been assembled adequately enough to make a claim that it was complete."

III. HERBICIDES

Dr. A. S. Krafts, Botany Department, University of California was asked at Davis:

Is there danger that continued use of herbicides in the soil result in the buildup of residues in the soil?

He replied: "I wouldn't say there is any imminent danger, but I think that this is a point we certainly should keep our eyes very closely on, and be thoroughly aware of. For instance, the shift

now in the use of chemicals for weed control is going from spray materials to materials which go on to the soil and are absorbed from soil by the roots of the plants.

What we speak of as "premergence" and "postmergence" materials, substituted ureas, the symmetrical triazines, cyanogen type of compound, the fluoroacetimides, vegedex, the whole group of those compounds which are applied to the soil to kill the seedling as they emerge from the seeds in the soil and, hence, control these pests

Now there has been a real conscientious effort on the part of some of the chemical producers to study these materials in the soil and assure themselves that the chemical is breaking down at a faster rate than it is being applied. But I would say that these people are experts—they know how to apply these chemicals where to apply them—when to apply them and they take their chemical methods and find out what the residues are. They assure themselves, for instance, that the residues are being broken down at a rate faster than they are being applied. Most of these sort of tests are being carried on under rather limited locations.

For instance, most of this work is going on in the East because the chemical industries center in the East . . . under the more humid conditions of the eastern states. The same sort of research should be going on here in the western states so that we assure ourselves that the same chemicals—under our conditions—are breaking down faster than they are being applied. Now I am fairly certain that all of that research hasn't been done.

For instance, to speak of the substituted ureas and the triazines—two groups of compounds that are used now extensively in crops. Now . . . these chemicals are being used on noncrop areas, on roadsides, open space and tank farms and places like that. I don't think we have to worry much. But you see they are applied to the soil, they are leaked into the soil by rainfall or by irrigation, so then the top few inches of soil where there is high biological activity, these compounds may be broken down quite rapidly. But comes along a pretty heavy rain after one of these, and these are—say down a foot or a foot and a half deep—where you get into a much reduced biological flora, a lower oxygen content, a higher seal-to content, I am not sure that these compounds are going to break down at the same rate. We should be conducting research on it.

We feel that we should have, in addition to the people we already have on our staff who are engaged in weed control research, we should have a man who spends all of his time studying the new chemicals, a few of the old chemicals that we have not yet studied and the new chemicals in California soils and the California agricultural conditions, and we have that man described in our 1961-62 Budget, and if the Legislature is so disposed to let us have that money, that man will be hired post-haste and we will put him to work.

It is particularly necessary in California because we have such a wide variety of soil types, a wide variety of climatic conditions all the way from no rainfall to 150 inches of rain, and some 40 or

50 crop situations. In other words, we have more diversity of crop soils, climates, pests and so forth, here, than we have throughout all the United States put together.

Oh, it's a national problem. There is no question about it, particularly, since the stress on residues is becoming a national problem. If we continue to use, say, substituted ureas in the soil for 10 or 15 or 20 years, I don't think there is any question at all, but some residues of that material are going to show up eventually in the crop. Now whether those residues are toxic or not is the problem for the toxicologists, and we are not prepared to answer those problems. But I think that we should be aware of this.

... Because industry is turning out more and more of these chemicals and you know the farmers are going to use them if they possibly can. And as stressed here before, if we don't have the information before they go into use we may run into difficulties before we do have that information.

IV. INSECTICIDES

The Deputy Agricultural Commissioner from San Diego County testified on insecticides and their use:

On the subject of pest control, I would like to confine my remarks to insecticides and those aspects of their use. These concern complaints by persons who reside in agricultural areas from the use of insecticides by farmers. The problem arises here because of urban development spreading rapidly into farming areas. One might reason that this problem can readily be solved by farmers moving into areas further out. Unfortunately, such a simple solution is not possible!

Land with an assured supply of good quality water is very limited, and especially so in the narrow belt along the coast where farmers are able to meet the high costs of production by growing off-season, high-income crops. These same factors of a dependable water supply, freedom from frost in the winter, and freedom from extreme heat in the summer make land equally desirable for residential purposes. This has resulted in farmers being subjected to keen competition by housing for the land they originally developed, and has resulted in integration of homes with farms.

In this county complaints have arisen mainly from the use of insecticides by vegetable and flower growers. Almost all of these complaints have come from the use of insecticides in dust form.

The use of insecticidal dusts by our tomato growers, for instance, is essential. First, it is impossible to grow a marketable crop without pest control treatments because of the prevalence of such common pests as the tomato fruit worm, tomato pin worm, tomato russet mite, horn worms and several more. Growers simply cannot invest as high as a thousand dollars an acre to bring this crop into production (and this figure is by no means a maximum but is close to an average now) and run the risk of losing most of the marketable fruit to pests. Other risks over which the farmer has little or no control are already great enough.

Loss of income from the tomato crop would not only be a serious blow to local farmers, but would also be a major loss to the economy of the community, since during the past five years, this crop has returned an annual average F O B income in excess of \$16 million and returned almost \$20 million in 1957.

Secondly, the tomato crop is staked on five or six-foot poles with rows closely spaced, and is often planted on steep slopes for better cold air drainage. These factors make the use of spray equipment impractical and even dangerous in many cases.

The result is that most insecticidal applications are made with small portable, high-powered back-pack dusters. It is difficult to confine dust applications strictly to the crop being treated, because once these dusts are discharged into the air even a slight unpredictable breeze may carry some beyond the property and into neighboring premises.

Thus, then, will serve to introduce some of the complexities of the problems.

First, there are those which come from people who fear that they may actually be poisoned by these drifting dusts. The National Agricultural Chemicals Association has pointed out that we need to realize that the average layman has little knowledge or information about insecticides, and under these circumstances his reasoning is often swayed by the alarmist. This is understandable since we all have a tendency to fear the unknown.

For many years I have observed the use of insecticides in the Chula Vista area where farming has been closely integrated with homes for a long time. It appears to me from these observations that the possibility of any toxic effects to the average person from casual exposure to drifts is extremely remote. All indications point to an absence of danger from this source.

The most difficult problem arises with people who are particularly sensitive to substances which may include insecticides, or even the inert ingredients. What responsibility regulatory officials have in protecting these individuals poses a difficult question. It seems to me that each case requires special handling on the basis of the circumstances involved.

The third type of complaint which was referred to as "psychological" takes many forms. Sometimes they originate from the fact that workers when applying certain hazardous insecticides use protective measures such as face masks and suitable garments. When persons in the neighborhood are exposed to slight drifts under these conditions they may express concern. They do not understand that the degree of exposure of these workers who handle the materials constantly is so much greater that they use special protection, whereas the human system can handle mild contacts with these insecticides without any difficulty.

The permit system which we enforce relating to use of injurious materials under provisions of Section 1080 of the Agricultural Code seems to be operating satisfactorily, with a low incidence of injury here. In no case, to our knowledge in this area, has there been adequate proof of injury to anyone not directly connected with farm operations from applications of these insecti-

cides. Existing regulations in our opinion are adequate to cover use of these chemicals.

What, then, is the answer to these complaints from residents in farm areas? From our experience in dealing with this problem, we believe that the best solution lies with an informed public rather than in additional regulation.

A great stride towards this goal was made locally by the formation within the San Diego County Farm Bureau of an Agricultural Chemicals Committee to promote peaceful coexistence. Meetings have been held with all governmental agencies who might have any jurisdiction in this matter.

This committee operated effectively in finding a solution to a particularly difficult situation which developed late last year in one of the outlying communities. The committee met with people of the community, farmers in the area, and officials concerned in the matter. After the problems were thoroughly discussed, farmers in the area voluntarily modified their pest control practices to such an extent that complaints have largely subsided.¹

The San Diego hearing revealed the viewpoints of persons interested in the hazards to humans from the use of insecticides. A representative of the Health Federation, Organic Garden Club and Southern California Milk Goat Association, testified:

Well, it's high time that the poison situation was controlled. There is no question about that. Because I can't go out and buy commercial fruit and take home to my wife, but what she is all covered up with water blisters from the poison on the fruit—no trouble she leave the commercial fruit alone and uses organic fruit—no trouble whatever . . . but the minute we go to a store and buy any fruit she is suffering immediately with the poison from the fruit. Fact of the case is you . . . it is not possible to buy fruit or products in any supermarket today that any self-respecting bug will touch or dares to touch, and it's high time we believe, that something should be done about it. And we are doing our utmost through the federation . . . Health Federation . . . through the garden clubs . . . and through the National Health Federation they are doing their utmost to get control of those things. Now the Health Federation last year did succeed in Congress in getting no more additives in food until they had been proven absolutely harmless and the opposition say that it will take 15 years to prove they are absolutely harmless. So you can see what we are up against. But the Health Federation is working tooth and nail for that . . . they have their lobby in Washington fighting the detriment to health and working entirely for the benefit of the human being and animals.²

The Agricultural Commissioner from San Diego County related that:

The problems of insecticides as a health hazard seem to be divided into two phases: (1) hazards to agricultural workers and to consumers from residues on agricultural products; (2) hazards

¹ Fred Thorne, San Diego Hearing, December 2, 1959.

² Ernest E. Putnam, San Diego Hearing, December 2, 1959.

to persons living in agricultural areas. In my opinion, hazards to agricultural workers and harmful residues to the consumer have been reduced to a minimum by strict state laws requiring registration of insecticides and the use of the more hazardous materials under permit and supervision. Complaints from persons living in agricultural areas seem to be largely influenced by the speed with which integration of people and agriculture takes place. These complaints seem to be of three types: (1) actual danger from the use of poisons; (2) allergies to foreign materials; (3) psychological effects upon people.

The application of pesticides may actually be less of a hazard than the pollution of air by automobiles, the treatment of the water we drink or the pollution of the ocean in which we swim. Pollution of all types seems to increase in direct proportion to population density. It is, however, a problem that requires close supervision and an informed public, in our experience a very helpful approach to the problem of our complex society and we have tried to help in bringing about of informing the public.²

The Bee Industry

Bees are important in this State not primarily for the honey and wax they produce, that's important to the beekeepers, but to agriculture of the State that's of only secondary importance. The main importance is in the pollination that they perform. One-sixth of the nation's beekeepers are in this State. Bees pollinate almonds, cherries, prunes, apples, oranges, lemons, cucumbers, canteloupes, squash, watermelons, berries, many vegetables, beans, safflower, cotton, mustard, alfalfa, red clover, ladino clover, trefoil and several other crops. . . .

Beekeepers have been increasingly hurt by insecticides for at least 25 years. . . . Twenty-five years ago it was the arsenics. The problems are, the cases stated right now, we are inadequately notified quite often.

Sometimes we are not notified soon enough because a person might have four or five or six loads in an area and if he is only notified a day or two days ahead of time, he doesn't have the time to move them because you can only move bees at night.

Another, is quite often we are not notified at all. Sometimes through our own inadequacy we don't notify the county that we have bees there and at least one case which occurred this spring in the oranges, the association of spray applicators went to the county commissioner, I assume, and got a list of all the beekeepers that had bees in the orange blossoms and at the end of the time when they weren't allowed to spray they sent a form letter to all these beekeepers saying they were going to start spraying again. They considered this sufficient notification. Whereas, a lot of beekeepers had may 1,500 or 2,000 colonies in there. This letter told them not a bit where they were going to spray or when they were going to spray in what area. They just told them they might spray anywhere.

² Dean F. Palmer, San Diego Hearing, December 2, 1959.

Another one is careless application. A lot of bees have been hurt by drip. Now a lot of this damage done to bees isn't so much from killing out a whole yard, there isn't too many full complete 100 pounds of yards of bees, but it's insidious killing of a few workers this day and maybe a few more in another field the next day and it keeps our production down. It's been a factor, I think, along with the weather in causing a low production in a lot of areas this year. Another one is, and there are many cases where spray has been applied right on the bee. We've had a lot of our beekeepers rent bees for pollination. Now most of the growers are very good about notifying us and helping us get the bees out of the way. But some of them just don't care, and they will spray right when the bees are in the pollination. They are cutting their throats, they are paying for the bees and then they kill the bees that are in there, but they don't think

Another case, a lot of sprays if they are applied at the right time of the day, applied when the bees are not working, the bees won't go into the field at all. There is enough repellent in the spray. But in a lot of cases the sprays are applied at the wrong time of the day when the bees are in the field. Even a relatively nontoxic spray if applied onto the bees it will kill them. Whereas, if applied early in the morning before the bees are flying, it gives him a couple of hours to get to the field it won't hurt him. DDT is one of those

Another problem that we have that is very difficult to prove. Who sprayed our bees? We don't know for sure, a lot of times, where they got sprayed and we can't prove that we do know. Unless, we happen to be there at the time the bees are hit. It's pretty difficult to prove it. A lot of times, as I have said before, it is difficult to avoid being sprayed even when you are notified because you might have so many bees in an area or you might have bees in four or five different areas and all of a sudden they are all going to spray, and you can't route them all.

Another problem is, a lot of times, for the sake of making their jobs simpler, the sprayers or the grower will use an insecticide more powerful than is necessary. They will, or he will use one that is good for several when he only needs to control one, and if he'd use these less powerful ones, a lot of times, it wouldn't kill the bees.

... The history of beekeeper and spray applicator relations hasn't been very sympathetic. We haven't got along too well in the past. The sprayer doesn't have a history of looking at the beekeeper's point of view at all, and this board, as I understand it, would be made up solely of sprayers and all regulations the board put out would be originated by the board. There would be no provision for any regulation even being considered that that board didn't think was a good idea.

No protection at all for the beekeepers. It would be complete protection for the sprayer, but there would be no protection for us and we would have no recourse if we felt there was a regulation that was needed, we would have no method of getting that regulation passed.

Parity honey prices would be about 18 cents and our price is around 11 to 12 cents. I don't know of any way that the California Legislature can help us.

Our problem is that we have a budget of about \$30,000 and there is very little that you can do with that kind of money. We print recipe booklets and we have a good manager. She gets a lot of free publicity, but we can't afford to buy advertising, displays or the like.

There is another thought, or another idea I've had and that is there have been several notices lately that different universities are experimenting with bee recovery and if one is developed which will work, I would very much like to see the Legislature pass some sort of legislation requiring that any insecticide which was highly toxic to bees would have a repellent in it that would keep the bees out for the length of time necessary to keep the bees alive.¹

A Biologist's Viewpoints

Dr. Robert L. Rudd, of the University of California Zoology Department, Davis, submitted an informal report to the Committee on Agriculture, California Assembly, entitled "The Ecological Consequences of Pesticidal Use." It is in part:

It details in more communicable form the kinds of effects which pesticides have in nature and where possible, points out the way in which problems might be resolved. These things need pointing out initially, however.

First, the outline could be made up in other ways. To some extent it is a "convenient" outline rather than a "logical" one. This form is necessary to avoid the platitudes of too much generalization. All living relationships are "ecological." The accounts are (hopefully) offered in more concrete terms.

Secondly, a man is not interjected simply as another species in an ecosystem. He makes immense demands on his environment and can affect it greatly. It is pointless to be anything but self-centered about production and economic matters.

Thirdly, it is also pointless to present only the economic aspects of the problem. There are in addition, moral, recreational and aesthetic phases which enter in. Any notion that these can be discounted or through low priority relegated to meaninglessness is naive and irresponsible.

Fourthly, all manners of decision-making are not the same. Legislative decisions—conclusions which are compromises of special interests—necessarily are the product of representative bodies. It seems to be the fashion of the day to form social conclusions in no other way. There are, however, conclusions based on a total-value philosophy—essentially following the best definition of conservation and the most reasonable channeling of energy sources. Too frequently the results of deliberation derived from the two methods of forming decisions are not the same.

And lastly, I offer the following as my considered judgment—the best appraisal I can make at the moment. The interpretations are personal. They assume no particular premise, but do recognize

¹Robert S. John, Fresno Hearing, September 29, 1959.

that most arguments in instances of conflict arising from pesticide use (as) having implied, if not stated, premises. It is used, for example, by agriculturalists that increases in crop yield are good and desirable. The premise is not as sound as it at first appears. Witness mounting food and fiber surpluses now causing great economic distress! There are other premises equally open to question. For example, many species of birds have increased their numbers because of "unnatural" cropping practices. When through chemicals or cultural means, their numbers are reduced, it is hardly logical to speak of "protecting our native fauna." What we should look to is the species no longer represented. Or in the case of a game species when such loss occurs, we should look to the value placed upon it by hunters and by the appropriate state and federal agencies. The ring-necked pheasant is a case in point. It is not a "natural" part of the fauna. It does well in the Central Valleys in an "artificial" environment. Nonetheless, it is by no means unimportant. We must simply qualify—"To whom is it important *and* why?"—before we make any total judgment. I offer my own opinions and value judgments with the full knowledge that others may differ.

A. The Response of Organisms

Our food and fiber comes from living things. We encourage certain kinds of plants and animals and discourage others. Frequently, encouraging a desirable kind leads to encouraging an undesirable species or to discouraging a desirable one. There is the problem at its simplest. We are not yet adept enough at managing plant and animal communities to get what we want and need without harming something we value, or without causing additional problems. Those of us in pest control lead a frustrating life trying to reach seemingly unattainable ends.

With the advent and wide use of synthetic organic pesticides seemingly the problem was licked. We could simply remove all competition. In retrospect the idea appears naive although it was widely held. A price still has to be paid. Toxic chemicals are judged effective or hazardous entirely on the value we give the organism.

By removing value judgment, we arrive at the physiological events presented in the outline.

1. Mortality:

The normal event of greatest importance in the life cycle of an animal or plant is death. Most toxicological judgments are based on the likelihood of killing. The testing procedures of the industrial labs, and the regulations of government are based largely on this emphasis.

In the broadest context possible these conclusions regarding mortality can be made:

- a. We have the chemicals to kill all undesirable animals, but not without hazard to other living things.
- b. Fatal hazard to man in this country is minimal. Those deaths which arise usually spring from carelessness, ignorance, or in some areas poor enforcement of existing regulations.

- c Mortal hazard to desirable forms of game and insects is not small, but no one genuinely can say how great it is. We do know that the broad-spectrum insecticides regularly kill most insect species which they contact. If animals which normally help to hold the pest insects in check are killed, then the pest species reappears in damaging numbers sooner than normally expected. We are so accustomed to a spraying regime that we consider it the norm. Only when other effects appear or the price of insecticides and their application becomes too high, do we examine the basic question (What happens when you spray the first time?).

As far as mortality of desirable vertebrate species is concerned, the incidence must certainly be increasing (although not necessarily from the high contact toxicity that is the traditional source of hazard). This is true because of (a) the wider use of broad-spectrum chemicals; (b) the wider use of less precise methods, notably aircraft, in their applications; and (c) the regrettable lag in developing and installing testing techniques which would give true measures of the total impact of chemical usage.

2 *Sublethal effects:*

a *Repulsion (by chemicals)*

Taken broadly, the repellent qualities of chemicals cannot be depended on too much. Much work has been done on them and more should be done. Repellent chemicals are now successfully used against nuisance insects, particularly mosquitoes, and against mammals, particularly seed-eating rodents. It has not been economically feasible to apply repellents over large areas. Entire fields can be made repellent to mammals, and I suppose insects, but cost and other factors prohibit.

Repellent chemicals should be exploited wherever possible. At the present time they are expensive and applied only to the immediate site of probable damage. (There are, of course, other means of repelling. And among insects the opposite number of repellents—attractants—have shown great utility in specific instances and great promise in general).

b. *Insidious changes:*

The event of most importance to most people is death. Economic entomologists think mainly of this event in their attempts to control insects, toxicologists think of it when assessing hazard of a control chemical to man and domestic animals. Whether toxicity or hazard is in question, mortality is most important. But subtle changes among survivors of treatment or among those animals casually exposed to chemicals are quite possible. Indeed it is probable that this kind of effect has been vastly underrated. Exposure to small sublethal amounts of chemicals can result in significant changes, and, in time, even death.

c. *"Resistance" in animals, notably insects*

Some classes of insecticides after continued use lose their effectiveness. In other terms, this means that the survivors

of insecticidal exposure have some special capacity to "resist" the action of the toxic chemical. It may be concerned for example with a lesser ability to penetrate insect cuticle or a more efficient internal detoxifying system. There are many ways by which it may be arranged. The important thing is that the ability is genetically based and is selected for at each exposure. Survivors tend to have young also possessing the protective trait. In time, populations of animals may be built up which for practical purposes are unaffected by the chemical. The "resistance" of house flies and mosquitoes is the best known. But there are other species. We ascribe most resistance to chlorinated hydrocarbon insecticides (e.g. DDT and dieldrin) but it has also occurred among the organic phosphate insecticides (e.g. parathion). Resistance of this type has now been recorded in over 150 species of insects and in most of the countries of the world (Brown, 1958). The existence of this reaction has accelerated the search for new control chemicals and methods of application.

Animals also "resist" chemicals by avoiding them. We term this "behavioristic resistance." It is merely the other side of the repellency coin. Public health officials are very concerned because vector mosquitoes are developing this behavioristic trait. The mosquitoes simply never come into contact with residual deposits of the insecticide. A good example is the yellow fever mosquito in Panama which can no longer be easily killed by residual insecticide treatments.

"Bait shyness" and the necessity to "prebait," both of which demand increased cost and ingenuity in rodent control are forms of behavioristic resistance in rodents. Bait shyness is very important. It ensures for example that chemicals cannot be used too often at once place. Otherwise it becomes ineffective in control. Rats and mice often avoid any strychnine-treated bait after the first exposure.

Resistance in its various forms is extremely serious and points up the need to control pest populations by proper sanitation and by cultural means wherever feasible. Exposure to chemicals almost inevitably results in some kind of adaptation toward them among the surviving animals.

B. Environmental Response

3 "Biological Deserts"—Relation to Production

- a Pollinating Insects. The prime pollinator in intensive agriculture is the honeybee. Diversified insect communities cannot be maintained in most of the situations characterizing California row or forage crop culture. The best evidence for the value of pollinating insects is the bee rental business. Through proper placement of hives during flowering periods, crop yields may be increased manyfold.

Many bee losses have been attributed to insecticides and safety to bees is an important consideration in insecticidal usage. "Sevin" for example, although in general very prom-

ising as an insecticide, has had its usage considerably restricted because of its high toxicity to bees

C. Ecological Relationships

1. Food

- b. Secondary Poisoning An animal may be killed by a toxic chemical and be itself "poisoned bait" for another animal. This relationship is merely a simplified sort of food chain as described earlier. The difference lies in the fact that toxic symptoms do not appear in the earlier links of the food chain; living organisms are carriers, not targets of toxic chemical.

These are the requirements for secondary poisoning: a highly toxic chemical, relative stability in living tissue; a food relationship between "target" species and secondarily poisoned; a bait substance (usually) which not only attracts the target species but concentrates the chemical.

In practice, these requirements are normally met only by mammal poisons. Strychnine, thallium, castrix, and compound 1080 are examples of these. In this country only 1080 is likely to cause serious problems of this kind. It is widely used as a rodent poison—directed chiefly against Norway rats in urban areas and against ground squirrels in the field. A more restricted but nonetheless regular use is made of 1080 by the U.S. Fish and Wildlife Service for the control of coyotes on western rangelands. In this instance poisoned flesh is left at "stations" during the colder months of the year. For all uses of 1080 good sanitation is desirable; poisoned animals should be removed from the treatment area and destroyed. But in practice only in urban areas is this really feasible. To some extent it is possible with the poisoned bait stations fed upon by carnivores. It is rarely attempted in field rodent control programs. Probably the greatest secondary loss known derives from these programs. Carnivores, notably the canids such as coyotes and foxes, are predictable secondary targets under these circumstances. Most landowners do not object to this loss. When domestic dogs or livestock are lost, it can be quite another thing.

The hazards of 1080 are well known. Normally where chemical hazard cannot be reduced, some variation of placement of bait, of bait material, or of timing is exploited to minimize unwanted contact. This is not completely possible. Under some conditions of use, 1080 still presents serious hazards. There is also a sizable public segment which objects to a "calculated risk" philosophy in chemical usage, particularly where losses involve something of recognized value.

Compound 1080 is highly toxic but differentially so; some rodenticides although inherently not as toxic, are more broadly toxic than 1080. This point is illustrated with secondary poisoning hazard to raptorial birds. The best evidence we have is that 1080 is not as hazardous as thallium (or strychnine, under some restricted circumstances) to rap-

tors In Europe, where thallium is still widely used, there is good evidence showing regular mortality of hawks and owls from poisoned rodents Experiments show the same potential for castrix, a rodenticide no longer used in America

3 *Animal Displacements*

- b Predator-prey Relationships A large part of the controversy surrounding the continued use of 1080 concerns the predator-prey relationship It's very important in insect control discussions as well All carnivorous animals are predators; many of these carnivores are useful to us and many are not Implicit in the controversy is a single theme; predators control the numbers of their prey Only on this basis can they be defended when the prey species is harmful, or attacked when the prey species is valuable In the special case of mammalian predators attacking livestock any removal of prey (sheep primarily) is sufficient cause on which to base large-scale control programs The very word "control" implies a value judgment, it means limiting to numbers favorable to man

There is commonly no attempt made to separate the idea above from the various values we give to predatory animals Insect predators are "good," coyotes are "bad," except, of course, as they "control" rodent numbers; mountain lions are "bad," except, of course, as they "control" deer numbers, hawks are "good" because they "control" rodent numbers, and "bad" because some capture birds when the opportunity presents itself

None of these judgments is completely accurate These predators do not themselves "control" prey numbers They may limit members for short periods and under special situations But, taken broadly, single species of predators cannot be considered the only source of population limitation There are simply too many other hazards to life for this to obtain It is equally inaccurate, however, to imply that they do not greatly assist in limiting numbers And they become more important as "control" agents as men through simplification of environment creates the habitats for greater numbers of pests

The important point is this Predator-prey relationships are considered one problem with one solution In fact there are many problems and many solutions Let me comment on a few of them

Predatory insects may in many cases not only "control" a prey species but locally may effectively "wipe it out" Normally, predatory (and parasitic) insects have good dispersal powers whereas the prey (pest) species have very limited ability to travel and a high reproductive capacity A prey population once discovered has little defense From the above it is clear that insecticides which remove predatory (or parasitic) insects are compounding the control problem by ensuring no checks to increasing numbers other than those of habitat

Changes in habitat are probably more important in increasing rodent numbers than destruction of predators (Koford, 1958). Some of these changes are unavoidable. We cannot do without alfalfa, for example, yet our present practices encourage pocket gophers as pests in them. But we can do without overgrazing which "opens up" rangelands and allows higher rodent numbers. And we can recommend cultural practices which do not favor pest species. (Pocket gophers on rangeland will become more numerous if present recommendations are continued.) And we can encourage natural enemies to exploit their value as much as possible.

The fur-bearing animals have not only economic value but are valued by many for their intrinsic appeal. Area-wide reductional control of coyotes, for example, reduces the appeal of the western range country. Coyote control is expensive, hazardous, and of dubious value even to those it purports to serve. However, no one who understands the manner in which such control campaigns are supported is going to expect sudden change on this score. The fur-bearing animals constitute part of the public price paid for the production of range livestock.

4 *Delayed effects*

Chemicals may have effects that do not quickly appear. A "residual" chemical delays exposure. Secondary poisoning kills unintended species, always with time lag and often without being discovered. The important aspects of "delayed" effects are two: (1) a time lag beyond the expected period of "control", (2) an effect not limited to the target species, or if so limited, an undesirable effect.

At the Davis meeting, Dr. Rudd stated that

We need research before conclusions. We don't need a popularity poll as the basis for using chemicals. We need to know what we are doing before we do it. Now, to qualify myself, I know this is not totally possible. There is so much uncertainty so that when we take the calculated risk, the least we will know, how much is that risk.

ESTABLISHMENT OF A PEST CONTROL BOARD

A representative of the Agricultural Pest Control Association, testified at Fresno, relative to transferring the licensing and regulation of agricultural pest control operators from the Director of Agriculture to an agricultural pest control board composed of five members appointed by the Governor. Membership on the board would be limited to licensed pest control operators.

Sponsors of the legislative measure testified their opposition, stating

I am here to oppose the bill. We feel that the bill was prematurely introduced. I do not have a statement here today as I gave you one at the committee in Sacramento. But our directors favor withdrawal of the proposed legislation and that statement has been given you. Our association actually does not represent enough of the pest control operators to take on this activity. We should be getting members and organizing our association before we go into the straightening out of the industry. We were supposed to have a full industry study. This study was never completed.¹

The Department of Agriculture submitted in their letter of August 21, 1959, opposition, as follows:

... The present method of licensing agricultural pest control operators was established in 1949, following several years of study by the Joint Legislative Committee on Agriculture and Livestock Problems. The legislation enacted in 1949, provided a system that has proved workable, and has furnished protection to agricultural producers, as well as tending to stabilize the business of agricultural pest control.

... Aside from the basic question of creating an industry board to carry out a regulatory function, which is already being adequately administered by an established state agency, there are a number of other objections to Assembly Bill 2513 as introduced. Among these are:

(1) Licensing of agricultural pest control operators is presently handled by the Department of Agriculture as one of the component parts of an over-all program of regulating the sale and application of pesticides. Other phases of the program are: (a) Licensing of pesticide manufacturers and registration of pesticides; (b) regulation of the use and application of injurious herbicides and other injurious materials, and (c) checking fruits, vegetables and other raw agricultural products for excessive spray residue. Establishment of a separate board to administer the provisions relating to pest control operators would not only increase administrative costs, but would result in a division of authority in the field of regulating the sale and application of pesticides.

¹ Gordon McChirsie, Fresno Hearing, September 29, 1959

(2) Deletion of language in lines 9 and 10 on page 2, would extend coverage of the act to such operations as treatment of fish nets, lumber, etc

(3) License fees for pest control operators, which are presently established by legislative action, would be set by the board instead (page 4, lines 5 to 8) The bill does not establish a maximum license fee that may be assessed by the board

(4) Provisions relating to exemption from license fees for farmers who are not regularly engaged in the business of pest control, and who spray for the accommodation of their neighbors, would be made more restrictive (page 4, lines 23 to 33)

(5) Application of worthless or improper materials would no longer be grounds for disciplinary action against a pest control operator (page 4, lines 43 to 44)

(6) Even though proponents of the measure expect the counties to continue to supply the major portion of the manpower for enforcement of the law, local authority is restricted in the following manner: (a) County registration would not be required, and counties would not be permitted to charge registration fees (page 5, lines 3 to 43), and (b) agricultural commissioners would not be permitted to make rules and regulations governing application of methods of pest control under local conditions (page 6, lines 12 to 21) ¹

At Fresno, the executive secretary of the Agricultural Aircraft Association, testified their opposition

It is our opinion that there are no problems in the pest control application business to indicate a need now or in the near future for such a self-governing board. The Department of Agriculture has the pest control situation in California well in hand. They work with the industry on any and all problems which arise, and we feel that they are much more qualified to determine the rules and regulations governing pest control application in the State than a board composed of the owners of crop dusting businesses. ²

Mr. C. O. Barnard, Executive Secretary of Western Agricultural Chemicals Association of San Jose, a trade association of 101 manufacturers of either basic pesticide chemicals, end-use pesticides, or components of such end-use products, related at Bakersfield

Western Agricultural Chemicals Association is opposed to Assembly Bill 2513 because it would establish within the Department of Agriculture a regulatory body composed in entirety of established agricultural pest control operators who would, in effect, be regulating their private businesses

In our opinion, a regulatory body of such composition would be contrary to good public policy. Such a body might with propriety have within its membership one person engaged in the business it would regulate, as a reservoir of technical information for the

¹ Charles V. Dick, Deputy Director

² Wanda Branstetter, Fresno Hearing, September 29, 1959

body as a whole, but its other members should be devoid of a vested interest in its decisions

Section 16014 of Assembly Bill 2513 recognizes in a negative manner the principle of nonparticipation of persons with vested interests in the membership of a regulatory body. It explicitly bars from membership in the proposed Agricultural Pest Control Board "a manufacturer, his agents or employees"

A large majority of the members of Western Agricultural Chemicals Association are manufacturers of products which are subject to the quite rigid regulatory provisions of the Agricultural Code. We know that objective regulation of those products is essential to orderly distribution and use; and in our opinion the code is administered fairly and impartially by the Department of Agriculture in the public interest

OTHER MATTERS PERTAINING TO AGRICULTURE

At the various meetings, along with the subjects on the agenda to be studied and discussed, persons testifying brought other matters to the attention of the committee relative to agriculture

I. MECHANIZATION

Dr Roy Bamber, Agricultural Engineer, University of California, Davis, informed the committee of the department at the university and what will be happening in the field of agriculture in the future with newly developed equipment

I suppose there are very few industries in the United States that can boast of doubling output per worker as has taken place in agriculture in the last 20 years. And at the rate that this mechanization is going on it's evident that probably in the next 20 years there could be a further doubling in the output.

One of the things that has taken place in this mechanization picture was the crops that were more easily mechanized were, of course, mechanized first. That included the cereals, hay and some of the general crops. Then came such crops as rice, sugar beets, cotton, but we are still talking about field crops. It became evident to the group in agricultural engineering some time ago, that if we are going to continue to have a balance in this agricultural production we had to begin to think of some of the crops such as the vegetables, the vine crops and tree crops, and, therefore, our efforts in working with other departments on this campus have been directed toward spreading this mechanization to some of the so-called high labor crops, and we felt, more or less, justified in this relation because of the importation of labor to the State from the South, and the inability—on the part of farmers—to get suitable labor to do much of this work.

I think one of the interesting current problems that is being worked upon at the present time is the work on tomatoes. This constitutes a breeding program carried on by vegetable crops. Dr Hanna has been doing the breeding work. We are practically on a crash program this year in that an attempt to evaluate some 200 new varieties of tomatoes that Mr Hanna has developed solely for the purpose of mechanization and we have a machine that will take tomatoes off the vines. And just what this will lead to I am not able to say right now, but it's very evident that the handwriting is on the wall, and we will be handling tomatoes mechanically.

Another problem that has been quite intriguing, and it was brought about by an unbalance of the setup in the San Joaquin Valley in this whole mechanization of the cotton. Some years ago—four or five—when the mechanical picking of cotton took over, the Raisin Advisory Board sent a group to this campus to talk with us about the possibility of mechanization of the raisin grape, me-

chanical picking of the grape. And they were quite complimentary with the progress that had been made in cotton, and they made the remark that the people that used to come in to pick cotton came in two or three weeks early—got a place to pick cotton—got a place to live and put the kids in school and then came over and picked our grapes. And since they don't come in to pick cotton, then we are a little short on grape pickers, therefore, we would like to have a mechanical grape harvester.

Dr. Winkler of the Viticultural Department demonstrated very conclusively that grapes could be retrellised and we have a machine that will pick these grapes off the vines and lay them on a continuous paper tray in the vineyard or deliver them to an elevator or a mechanical loader for going to the winery. To put this machine in operation, of course, is going to be rather costly in that the whole grape acreage will have to be retrellised, but I would prophesy that someday that's going to happen because when you consider this machine that we have will pick as many grapes as 65 hand pickers, you can afford to put some money into it.

We have other machinery that is on the threshold of use—an asparagus harvester that will bring asparagus . . . one in which one man can handle asparagus on 125 acres . . . cut asparagus at $3\frac{1}{2}$ miles an hour.

More recently we have gone into some of the tree crops. The prune harvest is over the hump so far as mechanization is concerned. Last year we had some demonstration of that would indicate that prunes can be handled mechanically. On a ranch at Meridian, we had one instance of 150 acres of prunes harvested with three men . . . these three men harvested 150 acres of prunes averaging 50 trees per hour. So I doubt if people are going to pick prunes off the ground when you can do that.

There is an interest right now on the part of the cling peach growers. I am not prophesying what might happen, but we are certainly going into peaches and apricots this year. And only in the last two or three weeks have been approached by the citrus people from the south. Those producing lemons find that only about half of the fruit reaches the market in fresh form and, therefore, why penalize the whole crop with the high cost of preparing—hoping that you will get into the fresh fruit market and wind up with half of the fruit in process, so hoping at least to go in that particular direction.

II. PUBLIC RELATIONS

A member of the State Board of Agriculture spoke of the lack of good public relations in the field of agriculture.

It seems to me that we are, unfortunately, probably the first public relations people of any industry in America. We are loud talkers, we complain bitterly, we fight bitterly, and we also have quite a lot of love in our hearts. But this public relations is the thing that is so vicious to us in agriculture. I'd like to take just a second to cite an example to you. Some 30 years ago we created

in America what we called our good neighbor policy and, primarily, the policy consisted of sending people abroad, practically all of our farm friends in trying to teach them how to better feed themselves. Agriculture played a terrific part—we sent trained men all around the world to do this job. We did not attempt to strengthen their economies. We were merely trying to teach them to better feed themselves. We didn't teach them how to build a textile mill in order to raise their standard of living. We were trying to teach them to better feed themselves. And in doing this we have done an excellent job. In many countries we are producing wheat to countries that we bought formerly exported wheat to. We have taught people to produce cotton to countries that we formerly exported cotton to. And today, we are told that if we are to have to strong agricultural economy, we must retain our export market. Now it doesn't take a Philadelphia lawyer to figure out that if we are to regain any of this export market we are either going to raise their standard of living of the countries we export to, or we're going to lower our standard of living in order to compete with them. I believe that we have built an America probably one of the greatest countries known to history, and I believe that our fundamental factor behind this strength is our ability to produce food. We have built supplies of foodstuffs that are available in storage spaces that practically insure the American people from a year to a two-year's supply with practically no production whatsoever. We have in storage this amount of food. I think the American farmer has played a terrific part in building the great America we have today.

Now, then, I believe that if people, the people of the United States knew more about, in fact, if we were better public relations people, certainly we wouldn't be considered today as a bunch of subsidized bums. We are proud of the fact that we have ample food supplies, and these food supplies have made it difficult to operate in a commodity market as we know it in America today. I think that when we are in trouble, that if the people knew what a great part we played in building our good neighbor policy, and the big part we played in building our reserves in America to the extent that we are the greatest power on earth, and history certainly teaches us that war is not won without foodstuffs. I believe that if we were better public relations people, and saw to it that people of America knew these facts, then when we are temporarily in trouble that we should have a little more receptive ears when we are talking to the people that live in the cities. It is quite a concern of mine and if there is anything possible that you people can do to help us better tell the story about agriculture to the American people, I am sure the farmer will be proud that you have taken any step that you might take.¹

Dr James T. Ralph, Deputy Director of the State Department of Agriculture, iterated at the Davis meeting.

... Aggravating the situation our farmers face today is the misunderstanding in the minds of city people as to the subsidiza-

¹ Charles Paul, Fresno Hearing, September 29, 1959.

tion of agriculture. A price support program does operate for a number of crops produced in America. But this program does not directly apply to most of California's agriculture. As a matter of fact, of the gross income received by California farmers in 1958, only \$23,000,000 out of a total \$2,852,000,000 was from government payments.

Lack of Understanding

The last item I wish to report to you concerns this problem of lack of public understanding of the farmer's situation. Our department has stepped up its program of public information to better inform the public and we are co-operating to the fullest with all news agencies and the university in this work.

III. RANGE AND FOREST IMPROVEMENT

Many ranchers feel a program should be instituted in the forest service to burn off and reseed the brushlands. To clean up logging and timbered areas in the fall and spring. They feel that there should be firebreaks built to prevent the holocaust that we are now having throughout the State of California . . . and we might say throughout the United States.

The Agricultural Extension Service today . . . in the recent *California Agriculture* issue showed for surface fire suppression cost \$97 per acre in 1957, compared to a cost of \$3 per acre for controlled brush removal by fire and other methods. At Susanville on July 7, at a meeting I was setting in . . . the forest service personnel stated "The Eagle Lake burn . . . portion reseeded to grass after the burn . . . is not returning to brush like the proportions that were not seeded. In that area, it seems, that it was owned by some private companies and by the government . . . on the portion that the wildfire went over and they reseeded quite a large portion of it, and left quite a portion that was not reseeded." . . . and they say there is certainly a vast difference there now in the brush regrowth between the reseeded and nonseeded areas.¹

The *California Agriculture*, June, 1960, edition, submitted statistics and information on controlled brush burning.

Range improvement programs are changing adaptable California brushlands into grasslands and thereby increasing feed supplies for livestock, improving watersheds, and reducing the hazard of wildfires.

California converts about 100,000 acres a year from agricultural production to residential and industrial uses. Increasing recreational use of public lands—about 55 million visitor-days annually—and private lands—15 to 20 million visitor-days a year—reduces further these land resources for livestock use. Consequently, rangelands—including grass revegetated brushlands—are of increasing importance as a natural resource.

¹ Jess Bequette, Red Bluff Hearing, August 26, 1960

An extensive series of adaptation tests of range forage plants—native and introduced species—has been carried on throughout California since 1938.

Range improvement involves removal and subsequent control of the brush, reseeding with desirable forage plants, and proper management of the grazing. The operator of a range improvement program employs technological advances as skillfully as does the farmer in the valley areas who grades the land, irrigates, plants improved varieties, cultivates and controls harmful pests.

The most widely used tool for range improvement in California is controlled fire. The number of acres burned under permit has increased from 50,424, in 1945, to 150,564, in 1958. Controlled fire is the most economical method to remove undesirable brush from carefully selected, potentially good rangelands.

Authorized by State Laws

Enabling legislation authorizes the California Division of Forestry to issue permits for controlled burning of brush-covered land in areas where fire protection is the Division of Forestry's responsibility. In a separate statute, the Legislature directs the division to engage in a program of experimental land clearance and revegetation of areas believed useful for forage production.

Controlled burning projects are carried out by the permit-holder on land under his legal control. Frequently the burns are co-operative, and two or more permit-holders work together in planning, preparing and conducting control burns.

Solution and Water Conserved

Whenever vegetative cover is removed from land by fire—either controlled burning or wildfire—there is danger of soil erosion but, if useful crops are to be produced, land preparation becomes a necessary risk. However, very little soil erosion has resulted from controlled burns.

Conversion of brushland to properly managed grassland aids in water conservation. The roots of grass are shallow. When the upper soil moisture is used up, perennial grasses usually go dormant and annual grasses die. Brush roots go deeper into the soil and remove moisture that otherwise could supply springs and streams during the summer.

Wildfire Control

The brush that covers much of California's hills encourages the spread of wildfires, hampers economic fire control and endangers vast areas of valuable forest land. Brush areas are a constant threat to adjacent property. In seven years of a nine-year period—1949 to 1957 inclusive—total annual acreage burned by wildfires exceeded that of controlled burns.

Cost per acre of control burning is less than cost per acre for wildfire protection. For example, in 1957, the statewide average cost of control burns was \$3 per acre. The average cost for wildfire suppression was \$97 per acre.

COMPARATIVE COSTS PER ACRE OF VARIOUS METHODS OF BRUSH REMOVAL

Controlled Fire			
Northern California 1947-48-- \$0 45 to \$2 95			
Shasta County :	<i>Average</i>	<i>Low</i>	<i>High</i>
1952-----	\$0 38	\$0 15	\$3 33
1953-----	54	14	5 52
San Benito County			
Low -----			\$7 23
High -----			43 24
Average statewide, 1959:			
No preburn preparation....	\$3 00 to \$4 00		
With preburn preparation....	\$5 00 to \$12.00		
Chemicals			
Ranges from -----	\$3 50 to \$50 00		
General			
Materials -----	\$2 00 to \$3 50		
Application -----	\$4 00 to \$5 00		
Desert sagebrush -----	\$3 50 to \$5 00		
Mechanical			
San Mateo and Santa Clara Counties			
Low -----			\$8 00
High -----			50.00

Chemical Control

Chemicals are widely used for control of undesirable woody species on lands which offer good potential for range feed production. The principal chemicals used are 2,4-D, 2,4,5-T, when used in accordance with label instructions, and the combination of the two, commonly referred to as brushkiller. Coyote brush, coast sagebrush, purple sage, white sage and mixed coastal brush are effectively controlled and suppressed by these materials, as are sprouting chamise and chamise seedlings. Old chamise and the chaparral, including the various manzanitas and ceanothus species, are not controlled by the now known chemicals until after burning. Sprouts and seedlings are then controllable by foliage application of 2,4-D, 2,4,5-T, or mixtures of the two.

More effective chemicals may be developed, which can be adapted to a wider range of species. Economic data on use of chemicals are somewhat meager, mainly because chemicals have not been used so extensively as fire.

Mechanical Control

Mechanical control of brush has shown some increase during the past few years. This practice has always been most widely accepted in Southern California where climatic conditions make burning less acceptable and where some of the brush problem occurs on areas which lend themselves readily to discing.

Many operators prefer to leave the knocked-down material in place for two or three years and complete the cleanup job with a broadcast control fire during late summer or fall. This method helps later forage plant stand establishment because of the general distribution of ash. Other operators either windrow or stack the brush in isolated piles and leave it for from one to several years. The piled material is cleaned up by winter burning when fire restrictions are not in operation.

Excessive soil disturbance during tractor clearing operations often restricts establishment of seeded grasses and legumes. Mechanically cleared brushlands may present a serious erosion hazard.

The controlled burning of brush, followed where needed by chemical treatment of regrowth and seeding of improved forage plants, is converting brush areas to grass. Controlled burning, properly planned and managed, brings many benefits to everyone.¹

IV. GREENBELTING

Mr. R. Ken Wilhelm, Secretary of the Santa Clara County Farm Bureau, testified at the San Jose hearing, stressing the need for reserves of agricultural land.

To initiate action to create permanent agricultural reserves, most promising of a variety of programs which might be tested, is the public acquisition of nonfarm development rights from owners of agricultural land. Such a program implies "It is in the public interest for certain farmland in metropolitan areas to remain in agricultural use." However, the value of land for development purposes is an inherent property right. If this value is obtained from an owner, he should be fairly compensated for its loss. Development rights acquisition leaves title to the land with the original owner. It leaves him possession of the right to farm the land. It should also leave him possession of mineral rights, water rights, trespass rights, and aerial privacy rights. The farmer retains incentive to manage his land and keep it in a high degree of productivity. The public at large gains the assurance of open space and a continuing food supply.

Having served on a conservation inventory committee, Mr. Wilhelm went on to say from his findings.

In this we analyzed the land capabilities and the land reserves of Santa Clara County. It is estimated that by 1975, 104,000 acres of our land in this county which is now bearing fruits, nuts and vegetables will be gone if we do not do something about trying to preserve this land. In other words, actually, more than four-fifths of the land in this county will have been dissipated and destroyed. Destroyed for agricultural purposes. Now we brought to the Legislature, during the last number of years, this problem. We have asked for your help and you certainly have given it to us.

We do know this, that we will have to ask your committee and the Legislature for assistance perhaps in getting the California Legislature to memorialize Congress to view our request for an experiment in this field with an honest and fair eye. Our purpose of this experiment is to come into an area which has been so badly exploited. Because here we have the maps, we have the records, and we have the area, and we have people who will co-operate.

This experiment to have the federal farm land bank come in and appraise the agricultural land that we have on the basis of its true agricultural value. This can be done very well. Now when

¹ Written by R. M. Love, University of California, Davis, L. J. Berry, J. E. Street and V. P. Osteril.

the federal farm land bank comes up with a fair appraisal its even something they'll lend money on, which means it must be pretty good

Actually, the average subdivision price in the San Jose area has been in the neighborhood of around \$1,500 an acre. Our interest in this thing is to separate what we would call a development rights value. Take this, buy it legally from the farmer—not necessarily at that cost—but at a reasonable figure because there are tax incentive things that could be figured into this particular proposition. There are various ways of approaching a figure that would be fair to the people and to the landowner as well. Restrict the deeds of this property accordingly, that the development rights had been sold and were deposited in the bottom of the archives building somewhere so they wouldn't be easily attainable and try this experiment of seeing if we can hold this land for agricultural production.

Now we have no hesitation on the part of Washington to discuss the problem that faces squarely with us. This, if it works, and we believe that it will work, is the supplementary action to exclusive agricultural zoning, by itself we have learned over the years, is not quite enough to do the job that you men are faced with as far as California's future is concerned. You have two goals, you want to keep the natural resource which we have in agriculture. Ten percent of the State's economy, 40 percent of its byproducts economy. You want to keep that, and at the same time you want to capitalize on this tremendous new wealth of industry and people because these are also natural resources. Now then, the only way you can do this is to design a program which calls for the maintenance of one natural resource while we build these others. It can be done. It doesn't mean we block industrial growth, it doesn't mean we block residential subdivisions, but it means that we help in their location so they do not, of themselves, destroy already existing resources. The nation has tremendous interest in what is being done here, because in California, as you know, we produce one-fourth of the nation's table food.

If you take the California product off the market or a major portion of the California product off the market, we will have inflation such as you have never seen before. At present our basic farm commodities are selling for what they did and have done historically over a great number of years.

Need for Zoning

We find that there is a need for exclusive agricultural zoning, that there is a need for municipal purpose zoning, that there is a need for open spaces recreational zoning, and lastly that there is a need for open spaces, just as an open space itself type of zoning. These four types of zoning, we believe, should be protected on the same basis as exclusive agriculture zoning at present is. That it should be subject to certain requirements before it can be changed in its use, before it can be annexed into a city.

The Director of Planning, County of Santa Clara, testified before the committee at San Jose relating the urgent need for preserving agricultural land

The conservation of our most productive land during the next 25 years poses one of the greatest dilemmas in the history of California

This great problem which has been emerging during the past 15 years has to do with the encroachment of urban development on the best soils of the State

In order to orient ourselves, let us look at the situation as it appears today and attempt to look ahead a few years in order to speculate on the future

To begin with, we know that California has a land resource of roughly 100,000,000 acres. We also know that approximately one-half of this land is publicly owned, primarily for the purpose of protecting such natural resources as watershed and timber. Also included are various national and state recreation and wildlife conservation areas as well as military establishments. Practically none of this land has agricultural potential beyond limited grazing.

Much of the remaining land is of the same type, having little value for agriculture—some is desert, some mountainous, some flood plain, and some tidelands, while some has limited topsoil underlain with rock or impervious clays.

When we have finally examined the situation, we find out that, at the most, only 16 percent of our land is arable and only 2 percent to 3 percent comprises the very best Class I soils. This limited amount of deep, rich soil lying in a number of well defined pockets is perhaps the most significant natural heritage of the people of California.

The growth of California has been discussed and measured in all respects, until it seems that everyone knows about it and has a fair idea of its magnitude. There is one aspect, however, which has had little attention. This concerns the phenomenon of metropolitan clusters and the locational problems they present.

The United States Bureau of Census has identified eight standard metropolitan areas. These have received approximately 90 percent of the population growth experienced in the last 15 years. Actually, these metropolitan centers combine to form two super constellations. One in the San Francisco Bay area including San Jose, Sacramento and Stockton—and the other in the Los Angeles area including San Diego, Riverside, San Bernardino, Santa Barbara and Orange County. These two complexes comprise a population of between 11 and 12 million.

Having noted this particular aspect of California's population distribution, it would seem to be important to ask the question as to the relationship of the distribution of the population to the general soil quality pattern of the State. When we superimpose the population growth pattern on the soil map, we can begin to see what is happening and perhaps sense the importance and urgency of taking some kind of remedial measures.

It is estimated that approximately four million acres of land has already been withdrawn for urban use and, although this

may not seem to be a large amount, it should be noted that it is of a greater amount than our remaining resource of prime land.

Since a large proportion of the best land lies in the areas of extremely rapid urban expansion and the projections for the next 25 years indicate continued growth in these areas, it seems reasonable to conclude that unless some positive program is instituted we will have by that time completely wiped out many of the prime productive agricultural areas of the State, leaving us with the more marginal limited use type soils as our sole agricultural base.

The economic significance of the disappearance of this prime soil is seldom realized. It is in actuality our most valuable resource. It produces vast wealth each year, producing 50 percent of the nation's fresh fruits and vegetables. It produces more tangible wealth and more stimulus to our economy than almost any other single activity in the State, including the basic manufacturing which has come into our metropolitan areas.

This problem certainly requires planning and programming. It needs consideration at the state level on an equivalent basis to the highway system, the water plan, and the outdoor recreation plan. This program deserves to have significant position in an integrated over-all plan for land use. It is a real tragedy that there is no state policy and program developed with the objective of protecting our soil. Thousands of acres go out of production each year, never to be reclaimed. Yet a protection program well conceived and administered would be simpler and cheaper to execute than either the highway or water plans. Most of this land has all the improvements necessary for optimum operation now. All that is necessary is to keep it from being overrun.

A firm policy in this regard could definitely modify the highway, water and other State plans. The best land should not be prejudiced by inadvertent freeway design and location. There is no question that such land constitutes the highest optimum market for water service provided by the state water plan. Certainly land-gobbling urban service uses can find locations of marginal soil types without undue inconvenience to the urban population.

For these reasons, it seems to me that we must establish a program of agricultural land conservation. When we consider the predicted growth and the tremendous pressures which will be applied to the land, it is obvious that firm policy must be developed and legislation and machinery for implementing such policy must be devised.¹

How Does the Lack of Statewide Planning Affect Local Land Use? (Alameda County)

Mr. Robert C. Harkens, Farm Advisor, Alameda County presented a "case study" of agricultural land needs in this Bay county, at the University of California, Seventh Annual Conference on City and Regional Planning. Portions of his statement is as follows.

So much has been said about agricultural surpluses that it is interesting for a change for an agriculturalist to talk about the

¹ Carl J. Belsler, San Jose Hearing, October 15, 1959

problem of people surplus. Most people are quite aware that agricultural land is being taken out of production and put into other uses, and this is happening in an increasingly rapid and disorderly fashion.

Alameda County is still an important agricultural area. At the present time over two-thirds of the land in Alameda County is being used for agriculture. Many acres are used for rangeland, but over 100,000 acres of it is in cropland, two-thirds of it non-irrigated and one-third irrigated. Alameda County is the leading cauliflower and cucumber producer in California. It is the second highest floriculture county in California, with a gross production valued at between \$7,000,000 and \$8,000,000. Alameda County has the third highest agricultural income of the Bay counties, following Santa Clara and Sonoma County, and is still in the top 3 percent of the nation's 3,000 counties as far as agricultural income.

So in spite of the urban encroachment, in spite of the tremendous increases of population, the most expansive industry in Alameda County is still agriculture.

The disorderly land loss in Alameda County is only an example of the pressures being exerted against agriculture in California and in other states in the United States. All of the leading agricultural areas with the good alluvial valley soils and the climates for best growth are feeling the pressure of urbanization on their lands. What's happening here in Alameda County is an object lesson that can help us stop haphazard encroachment of the same type in other areas and perhaps give us some clues as to how we might stop increasing mroads in the Bay area.

There are three initial jobs that cannot be done on a local level, but must be done if our local people are to have proper tools for logical land planning.

1. An Accurate Inventory of Land Resources in California

We know that there are 100,000,000 acres in the State. Of this, we know that there are 12,000,000 acres in cropland. Seven million acres of this 12,000,000 are irrigated, which represents 25 percent of all the irrigated land in the United States. At the present time, there is no more definite information on this. In some areas, there are good soil series inventories; in other areas, land capability classifications. Although these are extremely important, they don't tell the whole story. Additional factors that must be considered by planners are not included in either soil ratings or land capability classes. The most important factors not included are climate and water supply (quantity and quality).

2. A Projection of Land Needs for an Area

(for the State, or for a group of states here in the West)

California produces 47 percent of the gross agricultural income of the 11 western states. Our obligation in the future is going to be for more than just ourselves. At the present time, however, we have no projection or estimation of the number of acres we are going to need for the food and fiber production for an increased population in the Bay area, in the State of California, or

in the 11 western states. In spite of not knowing how much we have and how much we are going to need, we are withdrawing our land at a high rate and are telling ourselves that technological advances will make up the difference

3. Sufficient Co-ordination Between Agencies

At the present time in Alameda County, there are at least seven different planning agencies developing land use changes in agricultural land. No one has the responsibility to act as co-ordinator between these agencies. With the increased incorporation of county areas into municipalities, it becomes increasingly important that better co-ordination exist between the agencies so that local continuity of land use can be developed.

In addition to the need for local co-ordination, there is an increasing need for co-ordination between state and federal agencies who are engaged in local land use changes. Local and state agencies are involved in water development with projected plans for the heavy use being in agriculture. Land use maps developed in local areas show that most of the land designated for irrigation will be in some other use by the time the water is available.

Development of areas of responsibility beyond these must be carefully planned and slowly adopted. The problem of representation is an important one in all phases of a state agency and particularly in an agency involved in planning for land use. If we are to obtain a plan that meets the needs of the people, it must come from the people. This usually takes longer than a package program designed by technicians to meet what they believe to be the "needs of the people." The slower, more awkward program can often be more effective since it involves the individuals in our communities. We can't plan for people, we must plan with them.

Although it may seem surprising that we have progressed as far in land programs in California without these inventories and projections, it is somewhat understandable. The explosion of population is relatively recent, and still not well understood. Agriculture as an industry was well subsidized and surplussed to the extent that no concern seemed necessary. Now, people all over California realize that the threat to our natural resources is one that must be controlled. Solutions are not available without this basic information. We need it now!

These suggestions for a state agency include only those that will help local agencies arrive at a unified, designated policy of land use. The responsibility for land use would remain on the local level, but our people would then be provided with better information from which they could make better decisions.

A representative of the Butte County Farm Bureau and Agriculture Specialist at Chico State College, testified at Red Bluff:

I think land prices are another tremendous problem. Speculation where farmers sell out in the developing metropolitan areas of subdivision areas come up here and offer such exceedingly high prices for land, and it's impossible for a farmer to make it on that land if you figure out say an \$80 to \$100 gross per acre and

pay \$1,000 per acre for that land, he can't even make the interest and another thing, as these subdivisions approach the farm areas, why they practically dissolve the amount because the tax rate increases to the extent where it's impossible for the farmers to make it . . . and as far as the greenbelt is concerned . . . in our area at least, I have found that a lot of the farmers are as much against the greenbelt, especially the farmers who are in the potential subdivision areas, that are being taxed out of farming, they are as much against the greenbelt as anybody else because they can see a potential sale of a \$1,000, \$2,000, \$6,000 per acre where they could never get that out of farm land and they could never make it farming. And I know the school farm that we were trying to buy originally, and which we didn't get because the chap got married and a week later his wife said we were running her off her farm . . . All of that is slated for subdivision as far as they themselves are concerned . . . and some of the nicest land around . . . so I think that as far as the greenbelt is concerned . . . you won't find a great deal of farmer co-operation in your greenbelt, even though I am certainly 100 percent for it.¹

At San Diego, Roger F. Winchester spoke on the matter of unattended land.

Here is a matter on unattended land. Many private property owners in this area are not exercising responsible stewardship over all of the land for which they possess titles. This is particularly true on steep hillsides in both urban and rural areas. In many places fine houses have been erected on ridges above these hillsides. Some of these unattended expanses are hundreds of acres in size. Some are thousands of acres. The decline of agriculture during recent years in the area in which I reside has left most of the land surrounding me unattended. Fire hazardous brush now grows on the hillsides except on one adjacent property where some farming activity continues. Several owners—each own a portion of each brushy hillside which they have no use for but were required to buy because the previous owner of the large plot from which their parcels were obtained did not want any such land left in their hands.

I think the problem can be solved by legislation as follows:

Land use controls protecting the valleys for farming, revision of the property tax laws so as to render continued farming economical in such areas when surrounded by nonfarm residences; declare unused private and public brush lands, open range, state-wild, and require owners thereof and adjacent property owners to erect legal fences to protect their properties from public grazing if they desire protection therefrom, require that such fenced lands be maintained in a manner that will not be a hazard to adjoining parcels or portions thereof; such brushy hillsides and numerous parcels under single ownership or private joint fencing and grazing agreements.

¹ Loren Phillips, Red Bluff Hearing, August 26, 1960

With reference to emergency food production and soil reserves, Mr. Lynn Raymond, representing the Tehama County Association of Soil Conservation District related that:

As you gentlemen know, the State Division of Highways is building freeways right down through the country and picking up some of the finest land there is. Beaches and Parks are picking up some of the finest land there is. And different government agencies are doing that. And taking it out of the production. Sure, we have overproduction at the present time, but looking into the future, maybe 50 to 75 years, are we going to have enough soils to take care of the food production for the people of the State of California? The farmer is being shoved farther back into the hills into marginal land, trying to make a living and it's sometimes almost impossible.

IV. ENVIRONMENTAL HEALTH

Dr. Emil Mrak, Chancellor, University of California, Davis

I would say very briefly that as our population increases we industrialize, we become more civilized. We change the environment in which we are living. Now we are changing it at such a tremendous pace that we are causing problems ourselves. The federal government is now becoming interested in this because we are starting to realize that preventive medicine as related to our environment is equally as important as treatment. You may wonder why I mention this before an Agricultural Committee, but some of this is of genuine concern to the agriculturalists.

The problems of environment relates to air. You have heard a great deal about this. They relate to water, waste disposal, housing, food and noise. And many other factors that come into our total environment. There are some things that get right down to agriculture that may be a little surprising for you. We intensify agriculture, we grow large quantities of tomatoes in this area, we plow under the plants year after year. By doing this we increase the bacterial flora of the soil. This in turn can influence the canning operation because we increase a number of organisms that are resistant to heat and then we end up with spoilage problems. We say, as we intensify our agriculture and all, we get into troubles of this type. Well, the thing I wanted to point out to you here, today, is that the problems of waste disposal can be very serious. And some of these can be agricultural waste.

Now, I am the last person in the world to do anything but speak for agriculture. But I wanted to point out that these problems do exist. In Ohio, when they were spraying along rivers, some of the chemicals were washed in the rivers, fish were killed, people were using the water. We have got to look at this total picture. We have the same thing happening with many other wastes that come into our streams. I was really sad when our President vetoed the bill concerned with stream pollution. He must have had some pretty poor advice. This is not a state thing alone. It's a thing that covers many states. I wonder if this doesn't come into your agriculture because you do use this water. You do use it for animals, you use it

for irrigation I can visualize the time when you will have problems here

In connection with water, I can visualize the time coming when you will want to reuse some of this water. And the question has come up about the chemicals that are in the water, about the bacteria and so forth. There is some work that is underway now in Colorado on reuse of waste water and it's showing up very well. As far as I know the microbiology of it is not causing any problems. We don't know about the diversity of chemicals. I have already mentioned a few of the organic chemicals that they have had experience with along the Ohio River. It may surprise you to know in connection with water that our water purification systems are outdated, and that we don't necessarily kill off the polio, or we certainly don't destroy or get rid of all the chemicals that come into the water through our city systems. And I can visualize problems ahead here. As a matter of fact, we are using billions of pounds of synthetic detergents. Much of this finds its way into the water and the bacterial destruction of these things is very slow. They can go through the city systems and not be touched. So I can visualize the time when these things will be important in one way or another to agriculture. If we are to reuse water for human consumption— one of the real problems is what is left of the nitrate.

Now about food. There has been a great deal that has been said about agricultural chemicals and the residues on foods. As you know, we are having problems in California, I, personally, feel that we can cope with many of these problems if we just educate the people to do so. Our extension service is working along these lines now. We can hold it to a tolerance. I have my own feelings about tolerances in many of our foods. I believe if we are going to live with these chemicals we may have to establish tolerances. And if we don't live with the chemicals, then we are going to be short of food or else eat the insects, or the pests. As it may be put, we may find ourselves in the position of doing away with the chemicals and starving at 30 or, perhaps, using the chemicals and living until 90 when we might die of them. So, I would say that we have got to learn to live in these things, and I think that the real problem here is education and general control. And the one point, if there is to be a change, I personally, feel there needs to be a tolerance in a lot of these things.

Now I have an outline here that could go on for over an hour or so, but I don't think I'll touch anything more about it except that I would end up by saying that I believe that the federal government will increase the funds available. Perhaps, even up to \$15,000,000 or so, for research in this general area of toxicology and safety in chemicals and foods. At least the trend seems to be going this way—environmental health. And I believe there will be a lot of research on toxicology and the safety of these things, the manner in which they are used, the education, training programs and things of that type. I think this committee should be aware of what they are doing. I would recommend that this committee encourage this development in the federal government.

I think what we need is education and training, the proper time of application and things like that. For example, I know of some cases where if they apply them (tolerances) too late, then we can get into trouble. And I think what we need to do is have a real educational program.

But I do believe there are some commodities where we could establish tolerances and we have none now. I think they are unrealistic.

Well, of course, you are going to have some problems if you have a high tolerance on animal feed and low tolerance on the product that comes out of the animal. I believe that we are going to have to be realistic about these things. I think we can do a lot with education and training, but I think there should be some consideration to changing tolerances—particularly in certain commodities.

We need analyses, we need methods to determine these things, we need rapid methods for toxicological tests. Right now they talk about testing for carcinogen, while I helped write one of the monographs, I don't believe everything that's said in it. I object to it. It doesn't make sense to me to test for carcinogen by rubbing it on the skin, and putting it under the skin, when you are ingesting it. So I think we need rapid, reliable tests for these things.

Y. WATER—POWER

Wayne Ross, Shasta County Water Engineer, testified at the Red Bluff meeting on the need for power in the Northern Counties.

I know this subject is not on your agenda. I have in mind a recent project that has been talked about delivering Pacific Northwest Public Power to Northern California, and I would like to say that I would like to see an early start on this project. I understand they have more power from Bonneville Dam than they can use. Redding, California, recently negotiated a contract with the Bureau of Reclamation for a limited supply of power for the city. This supply will have to be supplemented soon to allow for increased demand in new growth. My reason for being here today, is to speak as a farmer. A large percent of the agricultural water used in Shasta County has to be pumped, and we need low-cost power to do this job. We also face a shortage in power in the very near future in the Shasta Dam Public Utilities District that is adjacent to Redding.

According to Mr. Floyd Dominy, who is Commissioner of the Bureau of Reclamation, this district is operating just about at its peak right now, and there has not been allocated enough power to allow for any growth or expansion, and we are experiencing growth there in this area every day. Forecasts show that total energy requirements to Northern California will double in the next 10 years, surplus power is available now from Bonneville Power Administration. Mr. Saul Schulze, one of the former chief engineers for the Bonneville Power Administration, recently told a State Senate Committee that each year's delay in construction of this facility represents an economic loss of approximately \$50 million.

This much power going to waste is sobering when it could be put to beneficial use just a short way to the south through the project to deliver power to Northern California.

As Chairman of the Board of Directors of the Bella Vista Water District in Shasta County, the project designed to deliver water to over ten thousand acres of what is now dry land, I know our local demand for power is going to be more than double the next 10 years. Therefore, I would solicit your consideration and cooperation in this project.

Mr. Ross went on to say that there isn't any natural gas available for agricultural power in the area, however, there is a possibility of getting it within a couple or three years.

The State would have the responsibility of delivering the power. The Bonneville Dam is a Bureau of Reclamation project.

In other words, as I understand it, the power that can be generated from the Bonneville Dam, there is not a market for it at its present location. And here in our location there is a constant demand for an increased amount of power, and said Mr. Dominy appeared in Redding a few weeks ago and in a public statement said: "When we had used the allotted amount of power that had been given us in Redding, also in the Shasta Dam area, that there was no further allocation had been made no further provision had been made." In other words, to use his language, he said. "the only thing they could do would be, pull the switch."

Conclusion was made that the federal government would build the facilities and the State entering into an agreement of some kind to provide high capacity transmission lines from the Bonneville area into the Shasta County area. Mr. Ross understood that there were a lot of the lines already in, which comes close to the southern Oregon line.

With reference to the water table in Shasta County, Mr. Ross stated:

... But in our area, the only ground water available in sufficient amounts has to be pumped at a rather deep depth, and I would say around 150 to 200 feet.

Well, in our immediate area there is no appreciable drop in that it just years ago it just dropped out. . . we don't have any ground water up there. We have a district that will be supplied water through the Trinity River Project, but to the south, the immediate south of our district, the Bureau of Reclamation has made surveys there and they tell us that there is sufficient ground water to irrigate the whole area, and that will be found at a depth, I think, of around . . . a pumping depth of around 200 feet. I understand they have to go around 600 feet to tap the flow. And they pump from around 200 feet.

There is no ground water in the area of the present Bella Vista Water District. I think that this has been brought out by many tests, in that the ground water that is available is not suitable to irrigate with. . . it has a high salt solution content. . . and barium and it can't be used for irrigation purposes.

Well, we will get enough water from the Trinity River Project to supply our district, BUT we have a relatively small district, and, in fact, we had to cut our district in two just this last year because we found—through these surveys of the Bureau of Reclamation—that we had ground water in the southern part of our district, so the reason that we need the power that I am talking about now is to pump this water from the . . . considerable depth in the lower end of our district, and also to distribute the water that we will get in the northern part of our district from the water that we will receive from Trinity Project.

They are told by the Bureau of Reclamation that about one acre out of three is . . . on about two acres out of three is marginal land

Jess Bequette, Shasta County Farm Advisor, related that:

Another thing I would like to mention is a statement I heard a watermaster make in a meeting here not long ago. This man just retired since the first of January, and he has been watermaster in Shasta County for a period of years . . . something like 20-22 years, I believe. In this meeting of the Water Resources Board, he made this statement. He said that, last year was the first year of, I believe it was Cow Creek Irrigation System he was speaking of, was the first year that he had not had to prorate water to the farmers for many years . . . and last summer—a year ago—was a dry summer. They asked him why. He said it was because . . . his interpretation . . . and he was quite sure he was right . . . of the vast logging operations that had gone on in the upper part of that creek's watershed and that due to this logging operation, and the cleaning out of the brush and the trash and what all goes . . . that they . . . up there underneath the trees that the snow had been able to get to the ground . . . they removed a vast amount of brush that causes evaporation and in so doing that water (snow) was allowed to hit the ground and the water go through the earth and percolate out and come down in our streams in the summertime. Now that statement came from an old water man that had been on the job for many years.

VI. PEAR-TREE DECLINE

The epidemic of pear decline was brought to the attention of the Agriculture Committee in October when Placer and El Dorado Counties were declared disaster areas by the Secretary of Agriculture.

As stated in the University of California, Agricultural Extension Information release dated October 17, 1960:

A task force of entomologists at the University of California are pressing a widespread search for an insect which may be responsible for spreading a deadly disease through California pear orchards with the terrifying rapidity of wildfire.

The insect experts are part of a small army of agricultural scientists who are striving to find the cause of the virulent disease—pear decline—and stamp it out as quickly as possible.

Beginning in a few California pear orchards in 1958, the disease has rampaged through the State and killed an estimated \$1 to \$2 million worth of trees in two years.

Pear decline causes affected trees to go into a slow decline and fail to produce new growth or fruit or to suffer a rapid collapse and wilt and die within a few weeks.

The scientists have fanned out on a broad front to investigate every imaginable cause of the disease.

Because pear decline bears a resemblance to certain other virus-caused fruit diseases which are carried from sick to healthy trees by insects, university entomologists have been mobilized to probe this possibility.

... Moving swiftly in their campaign to discover whether pear decline stems from an insect-transported virus, the Berkeley entomologists already have launched a survey of insects in Northern California orchards.

Dilworth D. Jensen, professor of entomology at Berkeley, said that only if and when a particular virus is proved to cause pear decline and to be transmitted by a specific insect will it be possible to start developing control measures.

It would be unrealistic and foolhardy, he warned, to expect scientists to pinpoint the cause of the disease and to evolve effective methods of combatting it before several years.

In a statement before the California State Board of Agriculture, Congressman Harold T. (Bizz) Johnson, Second District, California, stated in part:

"A comprehensive research program must be launched immediately. Until we find out the cause of pear decline we can only talk about interim solutions which really offer little or no hope to the stricken farmer.

"For instance, until we find the cause of the disease, what advice can we give the farmer whose orchard has been wiped out? Should he replant? Should he seek other crops instead of pears? If so, what?"

Mr. Robert Collins, president of the California Canning Pear Association, and Mr. Ross Johns, manager of the Bartlett Canning Pear Committee, met with Assistant United States Secretary of Agriculture Ferguson.

Mr. Collins and Mr. Johns did a wonderful job of presenting the problem to the assistant secretary and to other leading scientists of the United States Department of Agriculture.

The following day two things happened:

1. Placer and El Dorado Counties were declared disaster areas by the secretary of agriculture.
2. A task force of federal scientists met with Mr. Collins and Mr. Johns at the Agricultural Research Center in Beltsville, Maryland, and immediately began to outline a program for attacking this problem.

Every aspect from economic and marketing to biochemical and entomological will be considered.

A similar program has been outlined for the University of California by the U.C. Research Committee on Pear Decline. These companion programs would be co-ordinated with the federal effort and in this manner we could attack the problem from all angles.

The problem, of course, is funds.

I will do everything possible on the federal level to see that adequate funds are made available. I am urging the Department of Agriculture to initiate a program immediately with contingency or other funds available and promise to seek supplemental appropriations in January to carry on the balance of the work.

The California program, I believe, would cost about \$150,000 a year and the federal effort would be comparable. This is a small amount when you consider that the entire pear industry of California is facing ruin. Not only is this vital to the grower, but the economic effect will be felt throughout the State, in the canning industry, by suppliers, equipment manufacturers and dealers and in the whole range of our economic community.

A broad program of basic research is required. We must have basic knowledge of stock-scion relationships in all grafted fruit and nut trees. This is a long-range solution. We must seek studies of "inarching" of affected trees, and in this connection we must discover means of an early diagnosis. Federal scientists are on the brink of this discovery.

Beyond this, we must have biochemical research in fruit and nut tree growth and development, we must study entomology, pomology, economics, marketing, plant pathology, irrigation and nematology if we are to find a solution.

The program being devised by the United States Department of Agriculture would cover all of these questions and so would the state program proposed.

This is a critical situation. The losses are appalling and when you consider it takes 8 to 10 years to bring a new pear orchard into production and when you consider the fact that even if a pear grower were to decide today to start out new again, no one today knows how he should proceed in order to prevent recurrence of this epidemic, you can readily realize the importance of beginning immediately on this research program which not only will be of benefit to the pear growers, but to those farmers who raise all types of fruit and nuts.

... There are 4,000 acres of pears grown in El Dorado County. Seventy to 75 percent of El Dorado orchards are on Japanese rootstocks. Practically all the trees in these orchards will be capable of profitable production one year from now. Many already are beyond the point of salvage.

El Dorado's agricultural economy is a pear economy. It has no other crops to carry it through a rehabilitation period. Growers are in an untenable position there and similar conditions exist throughout the State.

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